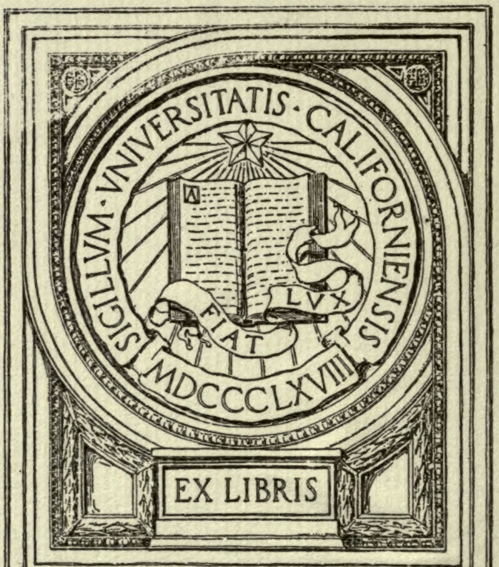
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EXCESS PROFITS
(INCLUDING EXCESS MINERAL RIGHTS)
DUTY
AND LEVIES UNDER THE
MUNITIONS OF WAR ACTS

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TAX ACTS MADE APPLICABLE BY STATUTE AND
BY REGULATION, ALSO THE REGULATIONS
OF THE COMMISSIONERS OF INLAND
REVENUE AND OF THE MINISTER OF
MUNITIONS

BY

W. E. SNELLING

FORMERLY OF THE INLAND REVENUE DEPARTMENT;
AUTHOR OF "INCOME TAX AND SUPER-TAX PRACTICE";
"INCOME TAX AND SUPER-TAX LAW AND CASES";
"INHABITED HOUSE DUTY"; AND
"COAL MINES EXCESS PAYMENTS, ETC."

SIXTH EDITION, REVISED AND ENLARGED

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PREFACE TO SIXTH EDITION

THE Author may express his satisfaction that this book should have run to six substantial editions in less than that number of years.

As he has previously called attention to his position as an official of the Revenue Department, it is only fitting that he should now state that he has terminated that connection.

For the information of new readers, extracts from the prefaces of the first and fourth editions are reprinted. They deal mainly with the arrangement of the matter contained in this book.

October, 1920.

MAXWELL HOUSE,
ARUNDEL STREET,
STRAND, W.C.2

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EXTRACT FROM
PREFACE TO FOURTH EDITION

THE provisions of the Finance Act, 1918, have received the necessary attention in this edition. Also, a considerable enlargement has resulted from the more detailed treatment of a number of important matters of practice. The enlargement is evident throughout the book, but particular reference may be made to the chapters on *The Restriction of Deductions for the Remuneration of Officials* (Chapter VII) ; *Long Contracts, Debts, etc., and Matters in Suspense* (Chapter IX) ; *Depreciation, Obsolescence, Postponed Renewals, etc.* (Chapter X) ; *The Valuation of Stocks* (Chapter XI) ; and *The Disposal of Trading Stock otherwise than in course of Trade* (Chapter XII).

The Summary of Rules, which provides a fairly complete guide to all Excess Profits Duty laws, now appears in Chapter XXII.

EXTRACT FROM
PREFACE TO FIRST EDITION

A NOTE may be permitted regarding the general character of the Excess Profits Duty law. This law is based on the existing Income Tax laws, but with extensive modifications. The Income Tax laws have for object the fixing of a standard according to which the profit of all concerns may be calculated without reference to individual circumstances. Though there always will be subject for argument, their main track has been fairly well beaten in the course of seventy years. But the new Excess Profits Duty law seeks to secure a fair comparison between the current profits and the normal profits of the same concern. This is a more difficult matter, inasmuch as the individual circumstances which go to produce the normal may not be excluded from consideration. It is hardly too much to suggest that, in important respects in this connection, the Act necessarily does little more than indicate the general direction which should be followed in the computation of the taxable excess. Within limits, the Legislature invites applications for the modification of general rules which peculiar circumstances render inequitable. The discretionary powers accorded to the taxing authority are similarly noteworthy.

In consequence, the provisions under review, imposing, as they do, a tax of unprecedented severity, are the most intricate of existing taxing enactments. The words of the Act are often of the utmost importance, and are accordingly set out fully in this work. But to secure facility of reference and intelligibility at sight, as far as may be, the effect of the law is summarized in numbered " rules " arranged in chapters according to subject. These rules are printed in outstanding type and are followed, in each case, by the words of the Section or Regulation in point, italicized so that they may be passed when immediate need therefor does not exist. This legal matter, again, is followed by the notes and examples which bear on the rule in question.

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UNIV. OF CALIFORNIA

EXCESS PROFITS DUTY

PART I

CHAPTER I

The Basis of Liability

BASIS OF LIABILITY—ALLOWANCE OF £200 PER ANNUM—£200 ALLOWANCE INCREASED WHERE PROFITS SMALL—ALLOWANCE OF £500 IN THE CASE OF EX-MEMBERS OF THE FORCES—SHORT PERIODS—RATES 50 %, 60 %, 80 %, AND 40 %—SET-OFF FOR LOSS IN PRE-WAR YEARS—SET-OFF FOR DEFICIENCIES IN OTHER PERIODS—SET-OFF FOR DEFICIENCIES IN OTHER CONCERNS—COMPANY OWNED BY SIMILAR COMPANY REGARDED AS BRANCH THEREOF.

1. Duty a percentage of excess beyond £200.

1. The duty payable is a percentage (*see Rule* 4) of the amount by which the profits of the period concerned exceed the "pre-war standard of profits." If the excess is not larger than £200 no duty is payable. If the excess is larger than £200, the first £200 of that excess escapes assessment.

See Rule 2, *however, as regards the increase of the* £200 *allowance in the case of concerns having profits not exceeding* £4,000, *and in the case of ex-members of the Forces.*

The sections of the Acts concerned are set out after Rule 4, page 16.

1. Duty a percentage of excess beyond £200.—(*contd.*)

The general effect of the tax may be illustrated by the following example—

	£
Profits of the Period concerned . .	11,000
Pre-war Standard of Profits . .	6,000
Excess	5,000
Allowance	200
Net Excess, of which 50%, 60%, 80%, or 40% is taken	£4,800

NATURE OF EXCESS PROFITS DUTY

The two cases which follow were approved by the Court of Appeal in *Patent Castings Syndicate, Ltd.* v. *Etherington*, page 179.

In the case **Re Condran : Condran v. Stark, 1917,** the vendors of a business were entitled to "one-third equal part of the net profits of the business" for each of the next five and a half years. It was held that this proportion should be computed on the profits remaining after the Excess Profits Duty had been met. *Peterson, J.*, based his decision mainly on the difference between Excess Profits Duty and Income Tax, particularly as regards the rule that in computing the former no deduction might be made for the latter, whereas in computing the latter a deduction was permitted in respect of the former. (Rules 51–52.) He suggested that these matters must be determined in accordance with

1. Duty a percentage of excess beyond £200.—(contd.)

the terms of the agreements concerned, and that he must not be taken to dissent from the decisions referred to under Rules 48–49.

Peterson, J., in distinguishing between Excess Profits Duty and Income Tax—

"It is no doubt true that both taxes are payable in respect of profits, but they are not payable in respect of the same profits; and it seems to me impossible, if Income Tax is payable in respect of net profits, to say that Excess Profits Duty is also payable in respect of net profits, inasmuch as the former is payable in respect of a sum which is ascertained after deducting the latter. In my view, Excess Profits Duty is, under Sections 38 and 45 of the Finance (No. 2) Act, 1915, a debt due to the Crown, the amount being ascertained with reference to the amount by which the profits exceed the pre-war standard.

"As regards the meaning of the words 'net profits': As I understand the words, they signify the excess of receipts over current expenses and outgoings of a business, the fund which in any year is capable of being applied to the payment of a dividend or capable of being divided between partners as the fruit of the year's operations. In a partnership agreement which provided that the net profits should be divided equally between the parties, Excess Profits Duty would be debited before the profits which were divisible could be ascertained; and in my view this agreement stands on a similar footing."

1. Duty a percentage of excess beyond £200.—(*contd.*)

In **Collins v. Sedgwick, 1916,** the selling price of the shares of a company was required by the Articles to be regulated in certain circumstances by a three years' aggregate of the sums which would have been paid as dividend upon the ordinary shares " if in respect of each of such three years there had been distributed among the members the entire profits of such years available for distribution as dividend." It was held that in ascertaining the amount of such profits, allowances must be made for the sum payable as Excess Profits Duty, and therefore not available for distribution.

Peterson, J.: " Whether this is a charge of a duty on profits or whether it is a debt that is measured by the amount of the profits, the same result, to my mind, is reached. If it be merely a debt that is measured by part of the profits, the result is that it is an annual payment which will have to be paid out of the revenue of the company and, therefore, will have to be deducted before you arrive at profits which can be divided among the shareholders. If it is a debt which is payable out of the profits, it is again an annual debt, a liability to a third party, which is payable to a third party, the Crown, not as dividend, but as debt, with the result that there is only the balance of the profits after providing for the debt which is available for distribution amongst the shareholders. The result, therefore, is, to my mind, that in no case can it be said that the entire profits of the business, including the amount of the revenue which would have to be attributed to payment of the excess profits duty, are profits available for distribution as dividend."

1. Duty a percentage of excess beyond £200.—(contd.)

The judge also pointed out that in the cases in which it had been decided that *Income Tax* was part of the net profits available for dividend, the decisions had proceeded on a view that Income Tax is paid by a company on behalf of its shareholders. In the case of *Excess Profits Duty,* however, the shareholder is in no way responsible for the duty.

Port of London Authority v. Orsett Union (1919).

It was held that Excess Profits Duty may be taken into consideration in considering the rateable value of docks, the profits of which are liable to Excess Profits Duty.

(See also cases under Rules 48 and 49.)

2 (a). 1ST JANUARY, 1917 TO 31ST DECEMBER, 1919.

2. Margin of £200 sometimes increased.

As regards any accounting period ending after 31st December, 1916, and before 1st January, 1920, the margin or allowance may be increased beyond £200 where the profits (adjusted as regards increased or decreased capital) of the accounting period are less than £2,000.

The increase is required to equal one-fifth of the difference between such profits and £2,000. If there are no profits the increase is one-fifth of £2,000, irrespective of the amount of loss.

If the pre-war standard exceeds £500, the increase is reduced by the amount by which the standard exceeds £500.

2. Margin of £200 sometimes increased.—(*contd.*)

2 (b.) FROM 1ST JANUARY, 1920.

As regards any accounting period ending after 31st December, 1919, the marginal allowance may be increased beyond £200 if the profits (adjusted as regards increased or decreased capital) of the accounting period are less than £4,000.

The increase is required to equal one-fifth of the difference between such profits and £4,000. If there are no profits the increase is one-fifth of £4,000, irrespective of the amount of loss.

If the pre-war standard exceeds £2,000, the increase is reduced by the amount by which the standard exceeds £2,000.

2 (c.) EX-MEMBERS OF THE FORCES

For all periods the margin of £200 becomes £500 in certain circumstances.

In the application of Part III of the principal Act[1] *to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and sixteen, the following provisions shall have effect—*

(*Finance Act*, 1917, s. 26.)

Where the pre-war standard of profits of any trade or business does not exceed five hundred pounds, and the profits of the accounting period, after any adjustment[2] *in respect of increased or decreased capital, are less than two thousand pounds, subsection* (1) *of section thirty-eight of the principal Act*[3] *shall have effect as though for two*

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[1] The Part of the Finance (No. 2) Act, 1915, which first imposed the Excess Profits Duty.

[2] See Rules 98 and 99.

[3] See page 16.

2. Margin of £200 sometimes increased.—(*contd.*)

hundred pounds there were substituted two hundred pounds with the addition of one-fifth of the amount by which the profits of the accounting period are less than two thousand pounds; so, however, that if there has been a loss in the accounting period, then for the purpose of ascertaining the amount of any repayment or set-off under the principal Act the addition allowed shall be such as if there had been neither loss nor profit, and that where the accounting period is a period of less than a year, this provision shall have effect as if there were substituted for two thousand pounds and two hundred pounds respectively a proportionately reduced amount:

The foregoing provision shall apply where the pre-war standard of profits exceeds five hundred pounds, subject to this qualification, that the amount of the addition shall be reduced by the amount by which the pre-war standard exceeds five hundred pounds: (*Finance Act*, 1917, *s.* 26 (4).)

In the application of Part III of the principal Act to excess profits duty for any accounting period ending after the thirty-first day of December, nineteen hundred and nineteen, section twenty-six of the Finance Act, 1917, *shall have effect as though in paragraph* (4) *for the words "five hundred pounds" and "two thousand pounds" respectively, wherever those words occur, there were substituted the words "two thousand pounds" and "four thousand pounds," respectively.* (*Finance Act*, 1920, s.47.)

In the case of a trade or business which is owned or carried on by any person who has served during the war as a member of any of the naval or military forces of the Crown, or of the Air Force or in service of a naval or military character in connection with the war for which

2. Margin of £200 sometimes increased.—(*contd.*)

payment was made out of money provided by Parliament, or in any work abroad of the British Red Cross Society or the Order of St. John of Jerusalem or any other body with similar objects, and which was commenced by that person for the first time, or having been wholly discontinued by him during the war or some part of the war, was recommenced by him, after his demobilization or discharge, subsection (1) *of section thirty-eight of the principal Act shall have effect as though " five hundred pounds " were substituted for " two hundred pounds."* (*Finance Act,* 1920, *s.* 44 (3).)

(2*a*) 1ST JANUARY, 1917, TO 31ST DECEMBER, 1919.

It will be observed—

(1) That this relief applies only to periods of account ended after 31st December, 1916, and before 1st January, 1920, but that it applies to the whole of any such period. Thus, the relief may not be claimed for any part of a six months' period covered by an account to 31st December, 1916; but it may be claimed for the whole of (say) a twelve-months' period ended 1st January, 1917. It is, of course, necessary to draw a line somewhere, and the apparent inequality is due to the stretching of a concession beyond its logical limits. The relief is a set-off to the increase of duty to 80%, and covers rather a wider period than that increase. (See Rule 4.)

(2) The first condition is that the profits of the period concerned shall be less than £2,000 after

2. Margin of £200 sometimes increased.—(*contd.*)

adjustments on account of variations in capital. (Rules 98 and 99.) Thus—

		£
Profits of the Period concerned .		1,500
Pre-war Standard of Profits . .		300
Excess		1,200
Normal allowance . .	£200	
Special allowance— $\frac{1}{5} \times (£2,000 - 1,500) =$	100	
		300
Taxable excess		£900

(3) Where the Pre-war Standard of Profits does not exceed £500, the relief is computed as shown above. Where it exceeds £500 the relief computed as shown above is reduced by the amount by which the standard exceeds £500.

Thus—

		£
Profits of the Period concerned .		1,500
Pre-war Standard of Profits . .		550
Excess		950
Normal allowance . .	£200	
Special allowance— $\frac{1}{5} \times (£2,000 - £1,500)$, *less* $(£550 - £500)$	50	
		250
Taxable excess . .		£700

2. Margin of £200 sometimes increased.—(*contd.*)

Of course, where the profits are *considerably* lower than £2,000 the allowance is large, and the standard can be considerably larger than £500 and yet permit of this relief being claimed. Thus—

		£
Profits of the Period concerned . .		950
Pre-war Standard of Profits . .		700
Excess		250
Normal allowance . .	£200	
Special allowance—		
$\frac{1}{5}$ × (£2,000 − £950), *less* (£700 − £500)	10	
		210
Taxable excess . .		£40

(4) But for express provision, a curious allowance would be made where a loss was incurred. In the case where the loss was £1,000, for instance, the increased allowance would be £600 (*i.e.*, $\frac{1}{5}$th of £3,000, the difference between £2,000 profit and £1,000 loss). In case of a loss of £20,000, the increase would be £4,400. In addition to the amount of the loss this allowance would swell the deficiency allowed for under Rule 5.

It is provided, therefore, that for the purpose of computing the additional allowance to be made under Rule 2, any loss shall be regarded merely as zero. The effect of this will be seen by comparing the following examples—

2. Margin of £200 sometimes increased.—(*contd.*)

(a) *Pre-war Standard,* £400. *Result of trading in period concerned,* NIL. (No profit and no loss.)

	£
Profit	NIL
Pre-war Standard	400
Deficiency	400
Normal Allowance	200
Special Allowance $\frac{(2,000 - \text{NIL})}{5}$.	400
Deficiency to be allowed for under Rule 5	£1,000

(b) *Pre-war Standard,* £400. *Result of trading in period concerned : Loss* £8,000.

	£
Loss	8,000
Pre-war Standard	400
Deficiency	8,400
Normal Allowance	200
Special Allowance $\frac{(2,000 - \text{Nil})}{5}$.	400
Deficiency to be allowed for under Rule 5.	£9,000

The point is that the special allowance is at its maximum where profits are simply NIL, no increase beyond that maximum being permitted by reason

2. Margin of £200 sometimes increased.—(*contd.*)

of the profits being more than £2,000 short of £2,000 (*i.e.*, being a loss).

(2b). FROM 1ST JANUARY, 1920.

As regards periods ended after 31st December, 1919, the £2,000 limit and £500 standard previously applicable to this concession are increased to £4,000 and £2,000 respectively. The illustrations given above apply, with the substitution of these figures. Not only is the allowance increased to one-fifth of the difference between the profits and £4,000 (instead of £2,000), but the allowance is not decreased unless the standard is larger than £2,000.

(2c). *Special concession to demobilized Navy and Army men who have commenced or recommenced business.*

In the preceding notes we have referred to a non-taxable " Margin " of £200. This Margin is increased to £500 in the case of any person described below who has commenced business for the first time, or recommenced business, after demobilization or discharge; viz., any person who has served during the war—

(i) in the Naval forces of the Crown ;

(ii) in the Military forces of the Crown ;

(iii) in services of a Naval or Military character for which payment was made out of money provided by Parliament ;

(iv) in any work abroad of the British Red Cross Society or the St. John Ambulance Association, or similar body.

3. Margin and standard reduced for short periods.—(contd.)

3. If the period concerned is less than a year the margin or allowance, whether it is £200, or £200 plus an increase under Rule 2, is proportionately reduced. In such a case, also, the "pre-war standard of profits" is reduced in the same proportion.

Where any accounting period is a period of less than a year, this section[1] *shall have effect as if there were substituted for two hundred pounds a proportionately reduced amount.* (*Finance* (*No.* 2) *Act*, 1915, *s.* 38 (2).)

Where the accounting period for which the Excess Profits Duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced. (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part II*, 2.)

Thus—

	£
Profits of the *six months* concerned .	800
Pre-war Standard of Profits, £1,300; ½ = ...	650
½ year's Excess . . .	150
„ Allowance . .	100
Net Excess . . .	50
Tax (at 50%, say) . .	25

Also, taking the figures of the example given

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[1] Page 16.

3. Margin and standard reduced for short periods.—(*contd.*)

under Rule 1, but assuming the profit of £11,000 to refer to a period of 10 months—

	£
Profits of the *ten months* concerned . .	11,000
Pre-war Standard of Profits, £6,000;	
$\frac{10}{12}$ths = ...	5,000
Excess	6,000
Allowance ($\frac{10}{12}$ × £200) .	167
Net Excess . . .	5,833
Tax (at 50 %, say) . .	£2,916

We give an example of a case in which an additional allowance has been given under Rule 2 in respect of a period ended after 31st December, 1916—

		£
Profit of six months ended 1/1/17 .		625
Pre-war Standard of Profits .	£400	
½ = ...		200
6 months' Excess .		425
Normal Allowance, — ½ of £200 = ...	£100	
Allowance under Rule 2 $= \frac{1}{5}\left(\frac{£2,000}{2} - £625\right) =$.	75	
		175
Taxable excess . .		£250

This adjustment of the Special allowance is required under the subsection set out after Rule 2.

4. Rates of Duty.

4. The proportion of the excess (less allowance) payable as duty is 50 per cent., 60 per cent., 80 per cent., or 40 per cent., according to the period concerned, viz.—

Businesses set up on or before 4th August, 1914.	50 per cent. for the first twelve months from the first day of the first accounting period (*see Rule* 18); then 60 per cent. of any excess arising to 31st December, 1916; then 80 per cent. of any excess arising to 31st December, 1918; then 40 per cent. of any excess arising to 31st December, 1919; then 60 per cent.
Businesses set up after 4th August, 1914.	50 per cent. for the whole of any accounting period ended on or before 4th August, 1915; 60 per cent. for the whole of any subsequent accounting period, but excluding any excess arising after 31st December, 1916; 80 per cent. in respect of any excess arising between 1st January, 1917, and 31st December, 1918; then 40 per cent. of any excess arising to 31st December, 1919; then 60 per cent.

Where an account covers part of a period chargeable at one rate and part of a period chargeable at another rate, the excesses or deficiencies are to be apportioned according to the respective lengths of time.

4. Rates of Duty. —(contd.)

50 % Legislation—1915

There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this Part[1] *of this Act applies, in any accounting period which ended after the fourth day of August, nineteen hundred and fourteen, and before the first day of July, nineteen hundred and fifteen, exceeded, by more than two hundred pounds the pre-war standard of profits as defined for the purposes of this Part*[1] *of this Act, a duty (in this Act referred to as " Excess Profits Duty ") of an amount equal to fifty per cent. of that excess.* (*Finance* (*No.* 2) *Act*, 1915, *s.* 38 (1).)

60 % Legislation—1916

The Finance (*No.* 2) *Act*, 1915 (*in this part of this Act referred to as the principal Act*), *shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of July, nineteen hundred and fifteen, and before the first day of August, nineteen hundred and seventeen, as it applies to accounting periods ended after the fourth day of August, nineteen hundred and fourteen, and before the said first day of July.* (*Finance Act*, 1916, *s.* 45 (1).)

Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period beginning after the expiration of a year from the commencement of the first accounting period, have effect as if sixty per cent. of the excess were substituted as the rate of duty for fifty per cent. of the excess.

Where part of an accounting period is after and part

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[1] *i.e.*, the Part relating to the Excess Profits Duty.

before the date of the expiration of a year from the commencement of the first accounting period, the total excess profits and any deficiencies or losses arising in the accounting period shall be apportioned between the time up to and including, and the time after, that date in proportion to the length of those times respectively, and the rate attributable to the time after and the time before and including that date shall respectively be sixty and fifty per cent. of the excess.

4. Rates of Duty.—(*contd.*)

In the case of trades or businesses commencing after the fourth day of August, nineteen hundred and fourteen, the rate of duty shall be sixty per cent. of the excess in respect of any accounting period ending after the fourth day of August, nineteen hundred and fifteen. (s. 45 (2).)

Any additional duty payable by virtue of this Section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period. (*Finance Act,* 1916, s. 45 (2).)

80 % LEGISLATION—1917 AND 1918

The Finance (*No.* 2) *Act,* 1915 (*in this Part of this Act referred to as the principal Act*), *shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August nineteen hundred and seventeen, and before the first day of August nineteen hundred and eighteen, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen and before the first day of August nineteen hundred and seventeen.* (*Finance Act,* 1917, s. 20 (1).)

Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period commencing

4. Rates of Duty.—(*contd.*)

on or after the first day of January nineteen hundred and seventeen, have effect as if eighty per cent. of the excess were substituted as the rate of duty for sixty per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if eighty per cent. were substituted for sixty per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period. (*Finance Act*, 1917, s. 20 (2).)

Where part of an accounting period or of an accounting year, or of any period in respect of part of which munitions Exchequer payments are chargeable, is after, and part before, the beginning of the first day of January nineteen hundred and seventeen, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which munitions Exchequer payments are chargeable, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively. (*Finance Act*, 1917, s. 27.)

The Finance (*No.* 2) *Act*, 1915 (*in this Part of this Act referred to as " the principal Act "*), *as amended or extended by any subsequent enactment, shall, so far as it relates to excess profits duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August, nineteen hundred and eighteen, and before the first day of August, nineteen hundred and*

4. Rates of Duty.—(contd.)

nineteen, as it applies to accounting periods ended after the fourth day of August, nineteen hundred and fourteen, and before the first day of August, nineteen hundred and eighteen. (*Finance Act*, 1918. s. 34.)

40 % Legislation—1919

The Finance (*No.* 2) *Act*, 1915 (*in this Part of this Act referred to as "the principal Act"*), *shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the first day of August nineteen hundred and nineteen, and before the fifth day of August nineteen hundred and twenty, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen, and before the first day of August nineteen hundred and nineteen.* (*Finance Act*, 1919, s. 32 (1).)

Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the first day of January nineteen hundred and nineteen, have effect as if forty per cent. of the excess were substituted as the rate of duty for eighty per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if forty per cent. were substituted for eighty per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date. (s. 32 (2).)

Where part of an accounting period or of an accounting year is after, and part before, the beginning of the first day of January nineteen hundred and nineteen, the total excess profits and any deficiencies or losses arising in any such

4. Rates of Duty.—(*contd.*)

accounting period, and the total excess rent for any such accounting year, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively. (*Finance Act,* 1919, *s.* 35.)

60% LEGISLATION—1920

The Finance (*No.* 2) *Act,* 1915 (*in this Part of this Act referred to as "the principal Act"*), *shall, so far as it relates to Excess Profits Duty, apply, unless Parliament otherwise determines, to any accounting period ending on or after the fifth day of August nineteen hundred and twenty, and before the fifth day of August nineteen hundred and twenty-one, as it applies to accounting periods ended after the fourth day of August nineteen hundred and fourteen, and before the fifth day of August nineteen hundred and twenty.* (*Finance Act,* 1920, *s.* 44 (1).)

Section thirty-eight of the principal Act shall, as respects excess profits arising in any accounting period commencing on or after the first day of January nineteen hundred and twenty, have effect as if sixty per cent. of the excess were substituted as the rate of duty for forty per cent. of the excess, or, in the case of an accounting period which commenced before that date but ends after that date, as if sixty per cent. were substituted for forty per cent. as respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date.

Any additional duty payable by virtue of this section in respect of a past accounting period may be assessed and recovered notwithstanding that duty has already been assessed in respect of that period. (s. 44 (2).)

4. Rates of Duty.—(*contd.*)

Businesses set up on or before 4th August, 1914.

In this case the 50 % charge is to apply for 12 months from the commencement of the first period reviewed. The date of this commencement varies, as shown in Rule 16.

The 60 % applies from the end of that twelve months to 31st December, 1916, after which the charge is 80%, 40%, or 60% according to period.

If the periods concerned do not happen to coincide with the end of the twelve months and 31st December, 1916, the change in rate must occur as from a date within a period. Thus:

1st period (year) ended 30th June, 1915.
2nd ,, ,, ,, ,, 1916.
3rd ,, ,, ,, ,, 1917.

The change from 50% to 60% is from 30th June, 1915, but the change from 60% to 80% is from 31st December, 1916. The excess to 30th June, 1917, is divided into two parts according to the length of time before and after 31st December, 1916. In this case one-half of that excess will be chargeable at 60 % and one-half at 80 %. If the period to 30th June, 1915, had not been for a year, a similar apportionment would have had to be made on the change from 50 % to 60 %.

It will be observed that, as regards the change at 31st December, 1916, the Finance Act, 1917, requires the apportionment to be by reference to the "number of months or fractions of months before and after" that date. There are similar

4. Rates of Duty.—(*contd.*)

provisions as regards the change at 31st December, 1918, and 31st December, 1919. These provisions are of an unusual character in an Act of Parliament, their sole object being to simplify the arithmetical operations concerned.

The following examples illustrate—

(1) a charge at 50%;

(2) charges at 50 %, 60 %, and 80 % in respect of a concern whose accounts are made up yearly to 31st December.

(3) charges at 50 %, 60 %, and 80 % where the profits have to be apportioned.

	£
(1) Profits of year ended 31st October, 1914	12,000
Pre-war Standard of Profits	8,000
Excess	4,000
Allowance	200
Net excess	3,800
Tax (at 50%)	£1,900

	£
(2) Profits of year ended 31st December, 1914	42,000
Pre-war Standard of Profits	34,000
Excess	8,000
Allowance	200
Net excess	7,800
Tax (at 50%)	£3,900

4. Rates of Duty.—(*contd.*)

	£
Profits of year ended 31st December, 1915	63,000
Pre-war Standard of Profits	34,000
Excess	29,000
Allowance	200
Net excess	28,800
Tax (at 60 %)	£17,280

The first accounting period commenced on 1st January, 1914. The 60 % rate becomes chargeable, therefore, from 1st January, 1915.

Profits of year ended 31st December, 1916 *at* 60 % (*as for* 1915).

	£
Profits of year ended 31st December, 1917	90,000
Pre-war Standard of Profits	34,000
Excess	56,000
Allowance	200
Net excess	55,800
Tax (at 80 %)	£44,640

4. Rates of Duty.—(contd.)

	£
(3) Profits of 8 months ended 30th November, 1914 . . .	16,000
Pre-war Standard (*annual*) = £18,000.	
$\frac{8}{12}$ × £18,000 = ...	12,000
Excess	4,000
Allowance (*annual*) £200. $\frac{8}{12}$ × £200 =	133
Net excess	3,867
Tax (at 50%) . . .	£1,933

Profits of 12 months ended 30th November, 1915	£30,000

The first accounting period (ended 30th November, 1914) commenced on 1st April, 1914. The 60% rate will, therefore, apply from 1st April, 1915. Of the 12 months ended 30th November, 1915, 4 months passed before that date and 8 months after. The £30,000 is divided into two amounts, £10,000 and £20,000. (Theoretically only the excess is divided, but the effect is the same.)

	£
Profits of 4 months ended 31st March, 1915 ($\frac{4}{12}$ × £30,000) .	10,000
Pre-war Standard (*annual*) = £18,000.	
$\frac{4}{12}$ × £18,000 = . .	6,000
Excess	4,000
Allowance (*annual*) £200. $\frac{4}{12}$ × £200 =	67
Net excess . . .	3,933
Tax (at 50%) = . . .	£1,967

4. Rates of Duty.—(*contd.*)

	£
Profits of 8 months ended 30th November, 1915 ($\frac{8}{12}$ × £30,000) .	20,000
Pre-war Standard (*annual*)=£18,000. $\frac{8}{12}$ × £18,000 = . . .	12,000
Excess	8,000
Allowance (*annual*) £200. $\frac{8}{12}$ × £200 =	133
Net excess . . .	7,867
Tax (at 60%) . . .	£4,720

	£
Profits of 12 months ended 30th November, 1916. Excess charged at 60%.	
Profit of 12 months ended 30th November, 1917	48,000

Apportion £4,000 to the 1 month ended 31st December, 1916, and £44,000 to the 11 months ended 30th November, 1917.

	£
Profits of 1 month ended 31st December, 1916 (apportioned) .	4,000
Pre-war Standard (*annual*) =£18,000. $\frac{1}{12}$ × £18,000 = . . .	1,500
Excess	2,500
Allowance (*annual*) £200. $\frac{1}{12}$ × £200	17
Net excess	2,483
Tax (at 60%) . . .	£1,490

4. Rates of Duty.—(*contd.*)

	£
Profit of 11 months ended 30th November, 1917 (apportioned)	44,000
Pre-war Standard (*annual*) = £18,000. $\frac{11}{12}$ × £18,000 =	16,500
Excess	27,500
Allowance (*annual*) £200. $\frac{11}{12}$ × £200 =	183
Net excess	27,317
Tax (at 80 %)	£21,853

Businesses set up after 4th August, 1914.

In this case an apportionment is never required as regards the change from 50 % to 60 %. As regards the changes from 60% to 80%, from 80% to 40%, and from 40% to 60%, the rule is the same as for businesses set up on or before 4th August, 1914, *i.e.*, the profits are apportioned (by reference to the number of months or fractions of months elapsed) unless the period happens to end on 31st December, 1916, 1918, or 1919, in which case apportionment is unnecessary.

The following example illustrates the position in regard to the change of rate from 50 % to 60 %.

	£
Profits of year ended 30th September, 1915	12,000

(Business set up 1st October, 1914.)

4. Rates of Duty.—(*contd.*)

In this case 60% will be charged in respect of the excess of the whole year ended 30th September, 1915, inasmuch as the business was set up after 4th August, 1914, and the accounting period ended after 4th August, 1915.

Had the concern in question closed its accounts at any day prior to 5th August, 1915, the excess shown would be chargeable at 50%. Thus—

Accounting period for 6 months ended 31st March, 1915 :

	£
Profits	5,500
Standard (annual) £8,000. ½ = .	4,000
Excess	1,500
Allowance (annual) £200. ½ = . .	100
Net Excess . . .	1,400
Duty (at 50%) . . .	£700

Also—

Accounting period for 6 months ended 30th September, 1915 :

	£
Profits	6,500
Standard (annual) £8,000. ½ = .	4,000
Excess	2,500
Allowance (annual) £200. ½ = . .	100
Net Excess . . .	2,400
Duty (at 60%) . . .	£1,440

4. Rates of Duty.—(*contd.*)

The duty for the two accounting periods is £2,140, as against £2,280 if the books had been made up yearly and not half-yearly. Thus—

Accounting period for 12 months ended 30th September, 1915:	£
Profits	12,000
Standard	8,000
Excess	4,000
Allowance	200
Net Excess	3,800
Duty (at 60%)	£2,280

5. Set-offs for deficiencies in other periods.

5. In computing the tax due in respect of the excess of any accounting period, an allowance is to be made in respect of any deficiencies of previous accounting periods. Similarly, when a deficiency occurs in an accounting period repayment is to be made of a corresponding amount of the duty paid in respect of earlier periods.

The amount allowed or repaid in respect of any deficiency is to be computed at 50 per cent., if the period in which the deficiency occurred was subject to the 50 per cent. rate, at 60 per cent. if the said period was subject to the 60 per cent. rate, at 80 per cent. if the said period was subject to the 80 per cent. rate, and at 40 per cent. if the said period was subject to the 40 per cent. rate.

For the purposes of repayment, any sum paid as Munitions Levy is to be treated as a payment of Excess Profits Duty.

5. Set-offs for deficiencies in other periods.—(*contd.*)

Where a person proves that in any accounting period which ended after the fourth day of August, nineteen hundred and fourteen, his profits have not reached the point which involves liability to Excess Profits Duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as Excess Profits Duty in respect of any previous accounting period, or to set off against any Excess Profits Duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of Excess Profits Duty paid by him during the whole period accord with his profits or losses during that period. (*Finance* (*No.* 2) *Act*, 1915, *s.* 38 (3).)

In calculating any repayment or set-off under subsection (3) *of section thirty-eight of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any period in respect of which duty would be payable at the rate of fifty per cent. of the excess, shall be calculated by reference to that rate of duty.* (*Finance Act*, 1916, *s.* 45 (2).)

In calculating any repayment or set-off under subsection (3) *of section thirty-eight of the principal Act any amount to be repaid or set-off on account of a deficiency or loss arising in any accounting period commencing on or after the first day of January nineteen hundred and seventeen, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of eighty per cent.* (*Finance Act*, 1917, s. 20 (2).)

In calculating any repayment or set-off under subsection

5. Set-offs for deficiencies in other periods. —(contd.)

(3) *of section thirty-eight of the principal Act any amount to be repaid or set-off on account of a deficiency or loss arising in any accounting period commencing on or after the first day of January, nineteen hundred and nineteen, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this Part of this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of forty per cent.* (*Finance Act*, 1919, s. 32 (2).)

In calculating any repayment or set off under subsection (3) *of section thirty-eight of the principal Act any amount to be repaid or set off on account of a deficiency or loss arising in any accounting period commencing on or after the first day of January nineteen hundred and twenty, or, in the case of an accounting period which has commenced before that date but ends after that date, on account of so much of the deficiency or loss as may be apportioned under this part of this Act to the part commencing on that date, shall be calculated by reference to duty at the rate of sixty per cent.* (*Finance Act*, 1920, s. 44 (2).)

For the purpose of any claim to repayment or set-off under subsection (3) *of section thirty-eight of the principal Act* (*which provides for the repayment of Excess Profits Duty paid and for a set-off against Excess Profits Duty payable*), *any sum paid by the claimant by way of munitions exchequer payments shall be treated as though it were a sum paid by way of Excess Profits Duty.* (*Finance Act*, 1920, s. 46.)

Where part of an accounting period or of an accounting year is after, and part before, the beginning of the first

5. Set-offs for deficiencies in other periods.—(contd.)

day of January nineteen hundred and twenty, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively. (*Finance Act*, 1920, s. 50.)

Thus—

1*st Period* (50 %) *reviewed*—

£ £ £ £

Excess . 8,000 − 200 = 7,800. Duty at 50 % 3,900

2*nd Period* (60 %) *reviewed*—

Excess . 2,000 − 200 = 1,800. „ at 60 % 1,080

Aggregate—

Excess 10,000 − 400 = 9,600. Duty . . 4,980

3*rd Period* (60 %) *reviewed*—

Deficiency 3,000 + 200 = 3,200. Repay at 60 % 1,920

Aggregate—

Excess . 7,000 − 600 = 6,400. Duty . . 3,060

4*th Period* (80 %) *reviewed*—

Excess 4,000 − 200 = 3,800. Duty at 80 % 3,040

Aggregate—

Excess 11,000 − 800 = 10,200. Duty . . 6,100

It will be observed that the allowance of £200 is taken from every excess and added to every deficiency. (The wording of the Act requires this.)

5. Set offs for deficiencies in other periods.—(*contd.*)

Similarly—

	£		£		£		£
1st Period (50%) *reviewed*—							
Deficiency	1,000	+	200	=	1,200	Allowance to carry forward at 50%	600
2nd Period (60%) *reviewed*—							
Excess .	600	−	200	=	400	Duty at 60%	240
Aggregate—							
Deficiency	400	+	400	=	800	Allowance to carry forward.	360
3rd Period (60%) *reviewed*—							
Excess .	1,600	−	200	=	1,400	Duty at 60%	840
	1,200	−	600	=	600	Duty payable .	£480

Also—

	£		£		£		£
1st Period (50%) *reviewed*—							
Excess .	800	−	200	=	600.	Duty at 50% =	300
2nd Period (60%) *reviewed*—							
Deficiency	1,000	+	200	=	1,200.	Repay . . .	300

Repay £500 at 60%.

Aggregate—

Carry forward allowance of £700 at 60% .. £420

In this case there is an allowance of £420 duty to carry forward. The matter might continue as follows—

	£		£		£		£
3rd Period (60%) *reviewed*—							
Excess .	1,600	−	200	=	1,400.	Duty at 60%	840
						Less allowance as above	420

5. Set-offs for deficiencies in other periods.—(*contd.*)

Aggregate—

Allowance for deficiency exhausted. To pay £420.

4th Period (80 %) *reviewed*—

	£	£	£		£
Excess	2,000 –	200 =	1,800.	Duty at 80%	1,440

Etc., etc.

The duty due for the third period would be £840, but for the rule now in course of illustration.

In the House of Commons, Sir J. Harmood-Banner, M.P., inquired as to instructions ("Circular 46") given to Surveyors of Taxes with regard to anomalous cases of Excess Profits Duty liability in spite of deficiencies.

Mr. Bonar Law replied: "It is only in connection with the assessment for the final accounting period that the occasion can arise for considering any special treatment of cases in which variations made from time to time in the rate of Excess Profits Duty lead to a net charge of duty, although the profits arising during the whole lifetime of the tax may not, when viewed in the aggregate, exceed the margin of liability. In the interim, in cases which for the moment present similar features, the Commissioners of Inland Revenue are ready on application to defer the collection of the charge."

It should be noted that a deficiency may be set only against an excess arising to the same person. In the case of change of ownership, an excess arising before the change may not be set against a deficiency

5. Set-offs for deficiencies in other periods.—(*contd.*)

arising after the change, nor may a deficiency before the change be set against an excess after the change. Of course, a change among the shareholders of a company is immaterial, as the legal owner, *i.e.*, the company, remains the same. The Revenue frequently makes a concession, however, where the proprietorship remains substantially the same, after what is apparently a change.

Commissioners of Inland Revenue v. Gittus (*Court of Appeal,* 1919). In September, 1915, the owner of a business died and was succeeded by his son. But for the change in ownership, the *Finance* (*No.* 2) *Act,* 1915, *Section* 38 (3), would have operated to set a deficiency to 30th September, 1915, against an excess to 30th September, 1916. It was held, however, that the only deficit which could be set against the excess of the new proprietor was such portion of the deficit to 30th September, 1915, as arose after the new proprietor commenced ownership. The new proprietor, under Rule 5 of Part II of the Fourth Schedule to the Act, had elected that the Act should apply " as if the trade or business had not changed ownership." The High Court held, however, that Rule 5 referred only to the computation of pre-war profits and did not make Section 38 (3) applicable as if no change of ownership had taken place. This was confirmed in the Court of Appeal.

6. Set-off for loss in pre-war years.

6. Where the net result of the three last pre-war trade years has shown a loss, a deduction is allowed from

the profits of the accounting period equal to the amount of the profits thereof which have been applied in extinction of that loss, provided that—

6. Set-off for loss in pre-war years.—(contd.)

(1) the percentage standard has been adopted; or

(2) the capital (as estimated for Excess Profits Duty purposes) is a minus quantity.

Where in the case of any trade or business—

(a) *The percentage standard is adopted as the pre-war standard of profits; and*

(b) *The net result of the trade or business during the three last pre-war trade years has shown a loss; and*

(c) *Any part of the profits has been applied in extinction of that loss;*

then in estimating the profits a deduction shall be allowed equal to the amount of profits so applied. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 7.)

Paragraph 7 *of Part I of the Fourth Schedule of the principal Act* (*which allows deductions to be made in respect of profits applied in extinction of losses*) *shall apply to a case where the capital account of any trade or business shows a debit balance as it applies to a case where the percentage standard is adopted as the pre-war standard of profits.* (*Finance Act,* 1916, *s.* 50.)

(See Rule 24 as regards the adoption of the Percentage Standard, and Chapter XIV as regards the estimation of capital.)

The *application of profits in extinction of the loss* appears to be a question of fact, and a strict view should not be taken. Thus, a loss may already have been set against profits *previous* thereto, but a part of the profits of the Accounting Period may have

6. Set off for loss in pre-war years.—(*contd.*)

been withheld from distribution in order to remove the strain on the company's finances caused by previous losses. This would seem to satisfy the words of the section. In the case of a private trader, the withdrawal from the business of the 1914 profits, after losses in 1911 and 1912, would not necessarily determine the matter. He might have made private arrangements to meet the losses in 1911 and 1912, and might withdraw the 1914 profits to make good those arrangements. Such profits have nevertheless been applied in extinction of the loss.

This rule cannot apply to the case of a new proprietor whose predecessor made a loss, unless perhaps he takes over liabilities equivalent to the loss.

(See Rule 18 as to the meaning of "the three last pre-war trade years.")

Percentage Standard adopted.—The capital of a company may be taken as £100,000, in which case the percentage standard would ordinarily be £6,000. Trading may be assumed to have resulted as follows:

Year to 31st December,	1911 :	Loss	4,000	Loss £ 1,000
„ „	1912 :	„	1,000	
„ „	1913 :	Profit	4,000	
„ „	1914 :	„	8,000	

Under Rule 19, the profits standard might no doubt have been adopted as the average profits of the best four out of the six years (1908 to 1913 inclusive).

6. Set-off for loss in pre-war years.—(*contd.*)

But the company has chosen otherwise. If, therefore, £1,000 of the £8,000 was "applied in extinction" of the loss of £1,000, the computation of the Excess Profits Duty for the year ended 31st December, 1914, would be—

Profit of Accounting Period . .	£8,000
less applied in extinction of loss .	1,000
	7,000
less Percentage Standard . .	6,000
Excess . .	1,000
Allowance . .	200
	2) 800
Duty (at 50%).	£400

Capital a minus quantity.—When the assets deemed to be employed in the business (Chapter XIV) are less in value than the debts and other allowable deductions therefrom, the capital is assumed to be a minus quantity. In such a case trading may have resulted as follows—

Year to 31st December, 1911 :	Loss £4,000	Loss £ 1,000
„ „ 1912 :	„ 1,000	
„ „ 1913 :	Profit 4,000	
„ „ 1914 :	„ 8,000	

(These are the figures assumed in the preceding example.)

6. Set-off for loss in pre-war years.—(*contd.*)

The Percentage Standard would be *nil*
,, Profits ,, ,, £1,500

$$\left(\frac{\pounds 4{,}000 - 1{,}000}{2}\right)$$

Profits of year ended 31st Dec., 1914	£8,000
less applied in extinction of loss .	1,000
	7,000
Standard	1,500
Excess	5,500
Allowance	200
Net excess . . .	5,300
Duty (at 50%) . . .	£2,650

The following example shows the carrying forward of the loss—

Year to 31st December, 1911 :	Loss £6,000	Loss £ 3,000
,, ,, 1912 :	,, 1,000	
,, ,, 1913 :	Profit 4,000	
,, ,, 1914 :	,, 2,000	

The Profits Standard is—

$$\left(\frac{\pounds 4{,}000 - 1{,}000}{2}\right) = \pounds 1{,}500$$

Profit of year ended 31st Dec., 1914	£2,000
less applied in extinction of loss .	2,000
Profit remaining . .	*Nil*
Allowance	200
Standard	1,500
Deficiency to carry forward (Rule 5) .	1,700

If there is a negative amount of capital at 1st January, 1915, the remaining £1,000 "loss" is available as a deduction from 1915 profits.

6. Set-off for loss in pre-war years.—(*contd.*)

7. Where a person carries on two businesses he is allowed to set a deficiency in one against an excess in the other, if the deficiency and excess occur concurrently.

7. Set-off for deficiencies in other concerns.

There is no direct Excess Profits Duty law sanctioning this rule, which is based on Section 101 of the Income Tax Act, 1842. This section reads as follows—

> "Provided always, that nothing herein contained shall be construed to restrain any person carrying on, either solely or in partnership, two or more distinct trades, manufactures, adventures or concerns in the nature of trade, the profits whereof are made chargeable under the rules of Schedule (D) from deducting or setting against the profits acquired in one or more of the said concerns over and above the profits thereof, in such manner as may be done under this Act where a loss shall be deducted from the profits of the same concern."

In the discussion on the Finance (No. 2) Act, 1915, Sir J. D. Rees, M.P., asked whether "an individual manufacturer or trader can deduct from any excess profit made by him in the year a loss sustained by him in the same period in respect of another business in which he is engaged." He received no reply at the time.

7. Set-off for deficiencies in other concerns. (*contd.*)

Later (on 7th December, 1915), the subject arose in connection with the liability of Local Authorities (Rule 89) in respect of their various commercial undertakings. Mr. Montagu (*Financial Secretary to the Treasury*) stated that Section 101 would apply to Local Authorities and to all "persons." He said: All that the Local Authorities want is that when the undertakings have been treated separately and assessed separately, the profits on one undertaking should be set-off against the loss in another. . . . That is the principle of the Income Tax law, and under the Bill as it stands the Income Tax Commissioners are empowered to apply by regulation the principle of the Income Tax law to this tax. The Income Tax law to which I refer is, I think, Section 101 of the Act of 1842. Under the ordinary practice, when people —both local authorities and other—have joint undertakings of this kind, they can set the profits on one against the loss on another; and as the principle of the Income Tax law is to be followed in assessing the profits of these undertakings, that is the principle upon which the municipalities will be taxed. The Chancellor of the Exchequer's Amendment on Schedule IV assumes from the provisions of the Bill that the principles of the Income Tax law are to be followed, and that you will have to compute, not the profits of each undertaking, but the total profits of the local authorities upon any trades or businesses which they carry on. These words clearly indicate that it will be the

7. Set-off for deficiencies in other concerns.—(*contd.*)

total profits of the local authorities with which the Commissioners of Inland Revenue will have to deal, and the Amendment states that from those total profits the sinking fund charges and so on shall be deducted."

Sir J. D. Rees commented that " the corporations will be a little uneasy at simply being referred to the general statement that the principle of the Income Tax law shall apply."

Mr. McKenna (*Chancellor of the Exchequer*) said: " It is undesirable to re-enact a statement of law which you have set out three lines before in the same Clause with which you are dealing. One of the principles of the Income Tax is that the profits on these undertakings, including the half undertaking referred to by my hon. friend, are to be determined as one set of profits. In order to give more confidence, I referred to the Amendment on the Schedule where we say 'in computing the total profits.' There would be no object in computing the total profits unless it were the law in accordance with Income Tax rules."

The assessment of Local Authorities is dealt with under Rule 89, but the above comments are relevant here.

It will be observed that Section 101 covers—

(*a*) a man carrying on business A as sole proprietor and business B as sole proprietor;

(*b*) a man carrying on business A as sole proprietor and being a partner in business B;

7. Set-off for deficiencies in other concerns.—(contd.)

(c) a man being a partner in business A and a partner in business B.

It has no reference to a shareholder of a company as such.

8. Company owned by another similar company regarded as branch thereof.

8. Where a company holds all the ordinary capital of a second company which the law allows it to hold, and both companies carry on the same trade or business, they are to be treated as one concern, the second company being regarded as a branch of the first.

Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business, or so much of that capital as under the general law a single shareholder can legally own, the provisions of Part III[1] *of this Act as to Excess Profits Duty and the pre-war standard of profits shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 6.)

The "general law" in question undoubtedly refers to the Companies Acts, and in particular to the limitation of the number of shares which a single shareholder may hold. It will be observed that the holding of shares may be through a nominee.

As to the businesses being the same, it can hardly be required that each company should have in all

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[1] *i.e.*, the Part relating to Excess Profits Duty.

8. Company owned by another similar company regarded as branch thereof.—(*contd.*)

respects the precise attributes of the other. The application of these words of the Act is a matter for the General or Special Commissioners, if appeal arises ; and it is difficult to dogmatize in the absence of concrete examples. If a shipping company has acquired the shares of a second shipping company, the rule applies. But if a shipping company holds all the shares of a harbour company (the harbour being open for general use), the businesses are not the same.

Dunlop Rubber Co., Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). The Dunlop Rubber Company carried on the business of manufacturing india-rubber goods. It also owned the whole of the ordinary share capital of five companies whose articles authorized them to carry on the business of manufacturing, etc., india-rubber goods, and which in fact had done nothing beyond the cultivation of rubber estates and the shipment of the whole of their produce to the Dunlop Rubber Company.

The Commissioners of Inland Revenue regarded the five companies as branches of the owning company within the meaning of Rule 6, Part I, of the Fourth Schedule. On appeal to the Special Commissioners, it was decided that the operations of the five companies, together with the operations of the owning company, constituted one business,

8. Company owned by another similar company regarded as branch thereof.—(*contd.*)

and the assessment was confirmed. In the King's Bench Division the decision of the Special Commissioners was reversed.

Rowlatt, J.: "The Solicitor-General points out to me, perfectly rightly, that, of course, no two companies or two individuals can own the same trade or business, in the sense that trade or business is an individual thing, which if a man has it, looked at in that way, another man has not—he has not that trade or business looked at as a particular asset, I was going to say. Of course, it cannot mean that. But the words "carrying on the same trade or business" are very familiar in the commercial and financial language of the day, and clearly to my mind, describe a company that is in the same line of business as others carrying on the same business. If they are both bankers they are carrying on the same business; if they are both milliners they are carrying on the same business. What the Solicitor-General is really asking me to do is to affirm the Commissioners, who apparently have read the words in this way, 'Where a company owns the whole of the ordinary capital of any other company carrying on a different part of what is essentially one business.' Now I cannot get that meaning out of those words."

The regarding of the second company as a "branch" of the first, raises a question in determining the "capital" of the combined concerns.

8. Company owned by another similar company regarded as branch thereof.—(*contd.*)

We may assume the following to be the Balance Sheet of the "owned" company—

BALANCE SHEET AT 31ST DEC., 1913

Dr.		£	*Cr.*	£
Nominal Capital, £34,000			Property account at cost	25,000
Issued Capital		25,000	Stock in hand	4,200
Loans from "owning" company		5,000	Debtors	3,100
Profits carried forward from 1912	£2,000		Investments	2,000
Profits, year to Dec., 1913	5,600	7,600	Cash at Bank and in hand	3,300
		£37,600		£37,600

It might appear that the owning company (if it holds the whole £25,000 issued capital) has £30,000 "capital" (£25,000 plus £5,000) in use in the company whose Balance Sheet this is. As this is a branch, however, the Balance Sheet must be scrutinized in the same way as that of the owning company. This is dealt with in Chapter XIV; but it may be observed that the capital of the "branch" for purposes of Excess Profits Duty appears to be £37,600 less that portion of the profits to be paid away as dividend, and less the £2,000 investments (Rule 91). If a portion of the profits to be paid away as dividend has in fact been used as capital for certain months in 1914, it should be regarded as capital for that period.

CHAPTER II

What Persons and Classes of Business are Chargeable

PERSONS CHARGEABLE—COMPANIES, ETC.—FIRMS—PERSONS RESIDENT ABROAD TRADING WITH PERSONS RESIDENT IN THE UNITED KINGDOM—BUSINESSES CHARGEABLE—PERSONS TAKING COMMISSIONS—AGENTS—CLASSES OF INCOMES EXCEPTED.

9. Persons chargeable; those ordinarily residing in U.K. and others.

9. The persons chargeable to Excess Profits Duty are—

(*a*) Those who ordinarily reside in the United Kingdom (in respect of concerns owned or carried on by them in this country or elsewhere);

(*b*) All other persons (in respect of concerns carried on in the United Kingdom).

The trades and businesses to which this Part[1] *of this Act applies are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom. (Finance (No.* 2) *Act,* 1915, *s.* 39.)

No technical interpretation is required of the phrase "*ordinarily resident*" in the United Kingdom. A person who wishes to escape may obviously do so by proving that he is ordinarily resident elsewhere, and this will doubtless be the procedure in common cases. There may be cases in which a person may claim to be ordinarily resident nowhere.

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[1] *i.e.*, the Part relating to Excess Profits Duty.

9. Persons chargeable; those ordinarily residing in U.K. and others.—(*contd.*)

His nationality or place of domicile would probably be deemed relevant, however. Furthermore, it would be difficult for a person "owning or carrying on a business" to have no central location or head-quarters over a course of years.

It will be observed that the admission of a claim that a person is not ordinarily resident here would serve to exempt him only as regards a business carried on out of the United Kingdom.

The place in which a concern is *carried on* is not necessarily the place in which its trading operations are executed. Thus, a man may never leave the United Kingdom, and yet may carry on (in this country) the business of gold-mining in South Africa. The "carrying on" may consist, in this case, of the exercise of a general supervision of mining operations actually directed by an employee. It may even consist in the unexpressed approval of his employee's management as made known to him by periodical returns or letters. As regards companies and societies, the concern is always carried on at the seat of management of the company or society in question. This is not necessarily the place of registration. It may usually be taken to be the place at which those who direct the concern meet and are to be met with.

In the above connection much Income Tax case law is in point. As regards individuals, see *Cooper* v. *Cadwalader* (1904); *Turnbull* v. *Foster* (1904); *Ogilvie* v. *Kitton* (1908); *Brown* v. *Burt* (1911); *Thomson* v. *Inland Revenue* (1919). As regards

9. Persons chargeable; those ordinarily residing in U.K. and others.—(*contd.*)

companies, there are many cognate decisions, *e.g.*, *San Paulo Railway Co.* v. *Carter* (1896); *Kodak* v. *Clark* (1903); *American Thread Co., Ltd.*, v. *Joyce* (1913); *Egyptian Hotels, Ltd.*, v. *Mitchell* (1915). But see below regarding a distinction between the rules for Income Tax and for Excess Profits Duty.

A further aspect of this matter must be borne in mind. The example, cited above, of a foreign mining business decided to be carried on in the United Kingdom because of a general supervision being exercised here will have been noted. Nevertheless, other considerations apply in a converse case. A Welsh coal-mining concern supervised abroad is carried on in the United Kingdom by virtue of the local manager acting as the owner's agent. A business may, therefore, be carried on in two places—hence the frequency with which the profits of certain classes of concerns are taxed in two countries. The whole profits of the South African mining business would be liable to review for purposes of the Excess Profits Duty. So, also, would the whole profits of the Welsh mine.

The effect of the words "*owned*" in any other place by persons "ordinarily resident in the United Kingdom" is to make a distinction between liability to Income Tax and to Excess Profits Duty. If the person referred to in a preceding illustration could show that he did not "carry on" the Colonial mining business, his Income Tax liability would be calculated on the profits remitted to this country. But the Excess Profits Duty will be

9. Persons chargeable; those ordinarily residing in U.K. and others.—(contd.)

chargeable by reference to the profits which arise, whether they are received here or not.

In the debate on the *Finance* (*No.* 2) *Act*, 1915, on 3rd November, 1915, Sir Archibald Williamson, M.P., asked if Excess Profits Duty will be payable upon the share of a resident in this country who is a sleeping partner in a concern carried on abroad. Mr. McKenna said he did not " propose, and the words do not in fact impose, a charge upon a business not carried on from the United Kingdom, which is only partly owned in the United Kingdom."

Section 10 (2) of the Finance Act, 1914, has, by regulation, been made to apply to Excess Profits Duty. (See Appendix, page 473.) This deals with the trade or business of a firm whose management and control is situate abroad, but part of whose trading operations takes place within the United Kingdom. The liability of such a firm is not affected by the fact that one or more of the partners is resident in this country. Any assessment on the firm may be made in the name of a partner resident here, but it must be confined solely to the trade profits arising in the United Kingdom.

10. Persons chargeable: bodies, trustees, etc.

10. Bodies politic, corporate, or collegiate, and companies, fraternities, fellowships or societies of persons (whether corporate or not corporate) are chargeable. The trustees, guardians, tutors, curators or committees directing the affairs of persons under age or of insane persons are also chargeable.

10. Persons chargeable: bodies, trustees, etc. —(*contd.*)

This rule is in force by virtue of Regulations made by the Commissioners of Inland Revenue under the powers given them by Section 45 (7) of Finance (No. 2) Act, 1915. Regulation 1 provides for the application to the Excess Profits Duty of Sections 40 and 41 of the Income Tax Act, 1842. (These are set out in the Appendix, pages 466 and 467.)

11. Persons chargeable: firms.

11. The business of a firm is chargeable in one sum irrespective of any other business carried on by the partners.

This also is an Income Tax rule made applicable by regulation. (See Rule 115 and Appendix, p. 470.) But see Rule 7.

12. Persons chargeable: foreigners trading with residents in U.K.

12. The High Court has declared *ultra vires* a regulation to the following effect—

Where a foreign person residing abroad carries on business with a person resident in this country, and the course of business does not, by reason of the close connection between the parties, bring such profit to the resident as might ordinarily be expected to arise, the actual profits arising to the non-resident out of that business may be estimated and assessed.

This provision is contained in the Finance (No. 2) Act, 1915, and is made applicable to Excess Profits Duty by regulation (see Appendix, page 474), now declared *ultra vires*.

Gillette Safety Razor, Ltd., v. Commissioners of Inland Revenue (*King's Bench Division,* 1920).

It was decided that the power given to the

12. Persons chargeable: foreigners trading with residents in U.K. —(*contd.*)

Commissioners of Inland Revenue to make regulations with respect to the assessment and collection of Excess Profits Duty and the hearing of appeals, did not authorize them to extend the provisions of the *Finance* (*No.* 2) *Act*, 1915, *Section* 31 (3) to Excess Profits Duty. A company carrying on business in the United Kingdom had been assessed under the *Finance* (*No.* 2) *Act*, 1915, *Section* 31 (3) in respect of the profits of a company carrying on business in America.

Rowlatt, J.: " The charge is made by Section 39, in effect, upon all trades and businesses carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom. Therefore the charge is laid upon a trade or business carried on in the United Kingdom.

" Now it is abundantly clear upon the facts that the Boston Company does not carry on trade in the United Kingdom."

(The Commissioners of Inland Revenue) . . . " have made regulations, and under Section 45(7) they have purported to apply (and purported with success at any rate so far as it refers to assessment and collection) Section 31 so as to bring in not only machinery, but to bring in the enlargement of the scope of the Income Tax and to make it an enlargement of the scope of the Excess Profits Duty, because they have said that they will now treat the appellants, who are not agents, as taxable in respect of a business which is not carried on in the United

12. Persons chargeable: foreigners trading with residents in U.K. —(*contd.*)

Kingdom, and therefore is not within Section 39 of the Act, or any provision in the Excess Profits Duty part of the Act; they will make them liable as if they were agents and as if upon a notional business which is carried on, by Sub-sections 3 and 4 of Section 31 of the *Finance* (*No.* 2) *Act*, 1915. I do not think that that can be done."

(The Attorney-General attempted to support the decisions of the Commissioners) . . . " by treating Sub-section 3 of Section 31 as a section which did not enlarge the scope of the tax but enabled the authorities to get at the true profits. I speak with great respect of anything which the Attorney-General said, but he was allowing himself to lapse into popular language. Sub-section 3 is not aimed at sham transactions so as to enable the Revenue to get at the truth of the transaction; it enlarges the scope of the tax so as to enable the Revenue to get at a different order of real transactions."

The Judge referred to various administrative difficulties making the application to Excess Profits Duty of Section 31 unreasonable in the absence of direct statutory direction.

13. Businesses chargeable: all trades or businesses.

13. Duty is chargeable on all trades or businesses of any description, whether they are continuously carried on or not.

(See Section 39 set out under Rule 9.)

Under the Income Tax Acts, the sources of profit reviewed are carefully distinguished and

12. Businesses chargeable: all trades or businesses.—(*contd.*)

divided amongst six "cases." For purposes of Excess Profits Duty, however, broad and sweeping words have been selected. All profit which can arise from commercial transactions becomes subject to the tax, with certain marked exceptions (Rule 15).

The words "*whether continuously carried on or not*" are of great importance. Profit realized on isolated transactions may not be chargeable under the Income Tax Acts (in which the word "annual" occurs so frequently). It was intended that the solitary nature of the transaction should not ensure exemption from Excess Profits Duty. Without defining the exact limitations of liability to Income Tax, it can be affirmed that Excess Profits Duty is chargeable in such cases as the following—

(*a*) Profits from negotiations for sale of buildings, horses, patents, or any other matters transferred from a second party to a third;

(*b*) Profits from securing or placing orders.

But it does not seem that a "profit" as the realization of an investment, or on other "casual" transactions, of which this is typical, is assessable. There are, in addition, all the more usual forms of "business" which are open to review in this connection. The Act does not distinguish between profits arising or increased *because* of the war and profits arising or increased from other causes.

In **Sutherland v. Commissioners of Inland Revenue** (*Court of Session*, 1918), a steam drifter was engaged in herring fishing until December, 1915, from which date it was hired by the Admiralty compulsorily.

13. Businesses chargeable: all trades or businesses.—(*contd.*)

The owner contended that from December, 1915, he was not engaged in business in respect of which Excess Profits Duty could be payable. The Court decided against this contention.

Lord President: "The Appellant plausibly contends that his fishing industry was brought to an end by the intervention of the Admiralty, and that the hiring by the Admiralty subsequently must be viewed as compensation to him for the stoppage of his business. . . . It was more plausibly contended by his Counsel that when the charter party was effected, trade came to an abrupt termination, and that under the hiring a new and entirely different business was commenced. . . . I am not disposed to view the case in that light. When the Appellant acquired this ship he acquired her as an instrument, or as the Lord Advocate phrases it, 'a commercial asset,' susceptible of being put to a variety of different uses in which gain might be acquired, and whichever of these uses it was put to by the Appellant and profits earned, he was carrying on the same business even although alterations were necessary on the vessel for the changed purpose, provided that each of these uses was one for which she as a ship was adapted."

Commissioners of Inland Revenue v. Marine Steam Turbine Co., Ltd. (*King's Bench Division*, 1919). The company went into liquidation in 1897, after selling its patent rights for cash, shares, and royalties, of which half would be payable by the liquidator to the original patentee. The winding up

13. Businesses chargeable: all trades or businesses.—(*contd.*)

of the company was stayed in 1900, since which year it has received the royalties in question.

It was held that the company carries on a business within the meaning of the Excess Profits Duty enactments.

Port of London Authority v. Inland Revenue Commissioners (*Court of Appeal,* 1920). It was decided that a concern which derived its income from rent for dock space, tolls, and shipping dues, carried on a trade or business in respect of which Excess Profits Duty may be chargeable, notwithstanding that the surplus revenue of the Authority is required to be applied to the maintenance of the Port of London. It was also held (reversing the judgment of the High Court) that an appeal may lie from the decision of the Commissioners as to whether a percentage standard or a profits standard is to be adopted. (See rule 19.)

Commissioners of Inland Revenue v. Korean Syndicate, Ltd. (*King's Bench Division,* 1920). The activities of the company were confined to the holding of investments, although it was formed also for the purposes of certain trading activities. It was held that the company had no income from a trade or business and that Excess Profits Duty was not chargeable on the dividends. If the holding of investments is not business in the hands of a private individual, it is not business in the hands of a company. The machinery which a company uses to keep itself alive does not constitute the carrying on of a business.

13. Businesses chargeable: all trades or businesses.—(*contd.*)

Commissioners of Inland Revenue v. Sangster (*King's Bench Division,* 1919). Mr. Sangster was an inventor to whom about 400 patents had been granted. Of these he had only sold one, about 25 years ago. In 1917, he entered into two agreements with the company of which he was Managing Director (at a salary and commission on results), one of which agreements entitled the company to share in any invention made by Mr. Sangster while in its employment. Mr. Sangster was a director of several other manufacturing companies.

The case concerned agreements entered into between Mr. Sangster and a company called " Decimals, Ltd.," formed to work a steel-rolling process invented by Mr. Sangster, who owned 12,500 of the 18,000 ordinary shares, and who, in July, 1914, was appointed a life director at a salary of £250 a year.

In the accounting period ended 31st August, 1915, Mr. Sangster received £14,145 royalties from " Decimals, Ltd." Mr. Sangster contended—

(*a*) that the royalties were income from property and not from trade or business ;

(*b*) that he was within the exemption granted to professions.

The Commissioners of Inland Revenue contended that the royalties were receipts arising from a trade or business. The High Court held that Mr. Sangster was not carrying on a trade or business. It was not carrying on a business to be a manager or a shareholder in a company. The Revenue were not

13. Businesses chargeable: all trades or businesses.—(*contd.*)

correct in suggesting that "the reality" must be looked at. The facts must be dissected, and looking at them all apart, the Court did not think that Mr. Sangster was deriving an income from a business. The fact that there was no Income Tax assessment (Income Tax having been deducted from the royalties) made Section 35 (Rule 52) inapplicable, and this confirmed that the Excess Profits Duty was not chargeable.

The essential point was that Mr. Sangster did not sell patents, but only granted licences to use them. As the property called into existence by the patent was not sold, there was no evidence of the carrying on of the business.

14. Businesses chargeable: persons taking commissions.

14. Persons taking commissions, also agents, are expressly included in the charge.

. . . *including the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description* (*not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency*). (*Finance* (*No.* 2) *Act*, 1915, *s.* 39.)

Here the taking of commission in respect of any transaction or services rendered is described as being incidental to a "business." As before indicated, all businesses are within the enactments.

All agents are included except—

(*a*) Commercial travellers; and

(*b*) Agents paid only by "fixed and definite"

14. Businesses chargeable: persons taking commissions.—(*contd.*)

sum, that sum being payable without regard to any future event or result.

See Rule 15 as regards non-liable sources of income.

In **Burt & Co. v. Commissioners of Inland Revenue** (*Court of Appeal,* 1919), two partners entered into partnership for the purpose of carrying on business as General Merchants and Commission Agents. The firm were approached with an invitation to become secretaries and agents of public companies. They accepted the invitation. Their remuneration consisted of a fixed annual sum, and usually of a commission on amounts realized on sale of produce. The firm did not sell the produce, but gave instructions therefor to brokers in accordance with the instructions of the various companies. One of the partners was also commercial adviser to a Chinese Company, and his remuneration consisted of a salary and commission on produce sold.

It was held that the profits from these sources were assessable to Excess Profits Duty, the business being within the statutory definition "that of taking commissions in respect of any transactions for services rendered, and of any agent of any description."

Sankey, J.: "Just as in their own deed of partnership they described themselves as agents of public companies, so in the minutes of their appointment by these three several companies they are described as agents. Now, in fact, it appears to me that the

14. Businesses chargeable: persons taking commissions.—(*contd.*)

work they did was agency work. . . . I do not intend to lay down here whether this was an office or employment, or whether it was a profession, the profits of which are dependent mainly upon the personal qualifications of the person by whom the profession is carried on. But I intend to decide the point, and that point only, which appears to me to be involved in the case—was this a business of a person taking commissions in respect of any transactions or services rendered, or was it the business of an agent 'whose remuneration consisted wholly of a fixed and definite sum not depending on the amount of business done or any other contingency.' Now, it appears to me that this business was the business of a person taking commissions in respect of transactions or services rendered. The words there are of the very widest possible character; and it is found by the case itself, as I think, that they were persons who were taking commissions in respect of services rendered. . . . A distinction was endeavoured to be drawn between what you might call professional advice and commercial agency. I think that this part of the case is very near the line; but I further think that there is a great difference, and a difference which is meant to be noticed by the Statute, between what I might call professional advice and commercial advice. The nature of the advice to be given in the present case appears to fall rather within the latter category, commercial advising. It has reference to the position generally of the world's markets, supply and

14. Businesses chargeable: persons taking commissions.—(*contd.*)

demand, prospects of crops; and in order apparently to perform this duty, it was necessary for him constantly to keep himself well posted as to the fluctuations of the various markets, and to get in touch with the leading men in the sugar trade."

Master of the Rolls: " The actual sales of property, tea or rubber, as the case may be, are made by and through brokers. But seeing that the business of the appellants includes the business of taking commissions in respect of services which they render, it does not matter that other persons also receive commission in respect of such services as they may render as the brokers for the sale of the produce."

Christopher Barber & Sons v. Commissioners of Inland Revenue (*King's Bench Division,* 1919). The appellants carried on business as stock and share brokers on the Sheffield Stock Exchange. They were excepted from the Excess Profits Duty on the grounds that they carried on a profession. The decision of the Special Commissioners that the exception did not apply was confirmed in the King's Bench Division.

Rowlatt, J.: " Now, roughly speaking, what the business of the appellants is, is a stockbroker's business, for which they are paid by commission on the amount involved, as the case states, and also an advising and valuing business, for which it is stated they are paid by fee.

" (*Counsel*) says this is a divisional business, and

14. Businesses chargeable: persons taking commissions.—(*contd.*)

in respect of that part of the business in which they do not take commissions they are entitled to be absolved from this assessment upon the principle of divisibility of activities which has been lately laid down in the Court of Appeal in *Maxse's* case (page 73).

"Now, assuming this divisibility in point of law, that depends upon whether they are carrying on a profession. One has to ask whether this advising and valuing business is the business of a profession. What is probably the substance of the matter is this—the Commissioners probably knew it. These people, being stockbrokers, attracted a certain amount of advising and valuing business, for which they charged a fee. In the valuing business it may have been a liquidated commission practically, though not a percentage commission; in other cases for advising it may have been purely a lump sum fee. But it is all attracted by and ancillary to their business of stockbrokers.

"Now is a stockbroker's business a profession within the meaning of this (*enactment*)? It is really gains by buying and selling, and you are remunerated by a commission from the person who takes the liability off your shoulders—your principal. And the advice given as stockbroker comes within *Burt's* case (page 58). It is the exercise of commercial knowledge in connection with the sale of commodities, not goods, but commodities in the market.

"That is my view upon this case, and I must say

14. Businesses chargeable: persons taking commissions.—(*contd.*)

that I very much doubt whether really it would be possible for me even if in my own mind I held a slightly different view, to decide otherwise, because, after all, the Commissioners are judges of fact."

Charles Radcliffe v. Commissioners of Inland Revenue (*Court of Appeal,* 1919). The remuneration of an individual serving as ship's manager to four steamship companies consisted of a percentage on freight in each case. Without expressing any opinion as to whether the appellant was fulfilling an office or employment, the Special Commissioners decided that he was expressly included in the charge to Excess Profits Duty by reason of the fact that he was a person " taking commission in respect of any transaction or services rendered."

Rowlatt, J.: " I wish to reserve my opinion as to whether there might not be cases of officers or employees who are paid a remuneration bearing a ratio or percentage to some other sum of profits or the like, who would not, by reason of receiving that percentage, be persons taking commission. But it seems to me quite clear that this gentleman is really paid a management fee representing a percentage on the freight, 2½ %, or on time charter, 7½ %, and he is paid a brokerage fee of 5 %. Now these seem to me to be quite clearly commissions.

" But I think one can go further than that in this case. This gentleman really is a ship's agent and a ship's broker, but confines his business to the sufficient clients whom he finds in these four companies. If you look at it in that way, of course the

14. Businesses chargeable: persons taking commissions.—(contd.)

case is absolutely within the decision in *Burt's* case." (Page 58.)

Confirmed in the Court of Appeal.

Binney v. Commissioners of Inland Revenue (1920). The appellant acted as agent and commercial traveller for four firms, being sometimes remunerated by commission. He had an office with a plate bearing his name, although this had been put up in respect of a business which had ceased. The office was mainly for the receipt of letters. The appellant employed four men for the purpose of travelling to solicit orders.

It was held that the appellant was a commercial traveller, even though he was also an agent and whatever might be the basis of his remuneration. The appellant was regarded as a commercial traveller by himself, by traders for whom he dealt, by the principal firm for which he travelled, and by commercial travellers' associations.

See Rule 48 as regards the deduction of Excess Profits Duty from remuneration of directors and managers, etc.

15. Exceptions from charge.

15. The following sources of income are not subject to duty—

(*a*) Husbandry in the United Kingdom ;

(*b*) Offices or employments ;

(*c*) Professions whose profits are dependent mainly on personal qualifications and which require little or no capital.

(*d*) Concerns which by reason of being unable to pay debenture-holders or creditors are being carried on by

15. Exceptions from charge.—(contd.)

a liquidator, receiver, or trustee under the Court—until provision has been made for the payment of such creditors, etc.

Excepting :

(a) *Husbandry in the United Kingdom ; and*

(b) *Offices or employments ; and*

(c) *Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount.* (*s.* 39.)

(*e*) Commercial travellers ;

(*f*) Agents whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency.

In the case of any trade or business which by reason of its being unable to pay its debenture-holders or creditors is being carried on by a liquidator, receiver, or trustee under the court, no Excess Profits Duty shall be levied or paid until provision has been made for payment of such unpaid debenture-holders or creditors. (*Finance Act,* 1916, *s.* 56.)

For enactment regarding (*e*) and (*f*) see after Rule 14.

HUSBANDRY

Husbandry indicates the care of a particular piece of land and the turning of its products to commercial advantage. But it does not include any considerable manipulation of such products. To illustrate by an extreme example, husbandry includes growing corn, but does not include

15. Exceptions from charge.—(contd.)

carrying it by ship. The shipping is a distinct trade.

This distinction would seem to assist in the consideration of more doubtful matters. Thus, a man who keeps sheep or cattle on land which is well able to sustain them, and who sells his yearly surplus to best advantage, is usually a farmer engaged in husbandry only. But he might become more than a farmer. An out-and-out cattle dealer is not engaged in husbandry only. Similarly a farmer can send his milk to market without going outside his calling, but he becomes more than a farmer if he opens a milk-shop or if he buys milk, for re-sale, from neighbouring farmers. These considerations receive strong support from the Income Tax Act, 1842 (Sec. 100, Sched. D, Case III), which provides for the assessment other than as farmers of cattle dealers and milk sellers or dealers whose lands "are not sufficient for the keep and sustenance of the cattle brought on them." There is also an Income Tax case (*Brown* v. *Watt*, 1886, 23 Sc. L.R. 403) which hangs on the distinction between farming and carrying on the business of selling seeds, etc.

In the course of the debate on the *Finance* (*No.* 2) *Act*, 1915, Ministers stated that husbandry covers market gardening and fruit and vegetable gardening, whether carried on under glass or in the open. In the case of profit on the sale of cattle, Mr. Montagu stated that the operations concerned would be included in husbandry where they were

15. Exceptions from charge.—(*contd.*)

part of the work of the farmer. If a man were a horse dealer or cattle dealer simply, he must be regarded as carrying on a trade.

In **Cavan Central Co-operative Agricultural & Dairy Society, Ltd., v. Inland Revenue, 1917,** it was held that the Society's business (churning milk for its members) was not within the husbandry exception.

In **Commissioners of Inland Revenue v. Ransom & Son, Ltd.** (*King's Bench Division,* 1918), a company carried on business as manufacturing chemists and growers of herbs. For the latter purpose, they occupied a farm. The General Income Tax Commissioners found as a fact, on appeal, that the farm was occupied mainly for the purposes of the factory, but considered that the profits of the farm should be excluded for the purposes of Excess Profits Duty.

It was held that there was evidence in support of the Commissioners' finding; and that as it was possible for them to separate the profits of the farm and the factory, they were entitled to do so.

Sankey, J.: "Now in the accounts of the company as certified by their auditors and adopted by their shareholders, the whole of the transactions of the company are included, and no distinction in those accounts is made between the result of growing the herbs on the farm and the result of their distillation at the factory and their sale to the public. But one of the directors of the company, who is apparently told off to the particular duty of supervising the operations upon the farm as

15. Exceptions from charge.—(*contd.*)

distinct from the operation of the factory, has kept a profit and loss account which refers to the farm alone, and he treats the produce which has been sent to the distillery, or rather to the factory, separately.

"There are two contentions advanced on behalf of the Crown: (1) that the growing of herbs to use in the factory is not husbandry, and (2) if the growing of herbs to use in the factory is husbandry, the main and substantial business of the company is that of manufacturing chemists and druggists, and there is no right in the company to split up their business and say that in respect of part of it they are entitled to the exemption provided.

"The first question which I have to decide is whether this was husbandry. (*Counsel*) asked me to say that 'husbandry' meant what in ordinary parlance we call farming, and that it was impossible to say that people who grew herbs under the circumstances in which the company grew these herbs were farmers. Now I do not agree with that contention. I think that husbandry is a term of very wide signification. I am not prepared to lay down that a man who tills and cultivates the soil is in all circumstances a husbandman or engaged in husbandry; but in this particular case I can see no distinction between the man who tills the soil for the purpose of producing food for human consumption and the man who tills the soil for the purpose of producing medicine and drugs.

"Beyond that it seems to me that it is very much a question of fact. I was reminded by Counsel

15. Exceptions from charge.—(contd.)

that, after all, questions of fact and questions of degree are for the Commissioners, and I do not think that I have a right to reverse their decision unless I can say that there was no evidence upon which they could come to the conclusion that those people were engaged in husbandry.

"I now come to the second point, which is one of considerable difficulty. I can conceive cases where the two branches of a person's business, and in a person I include company, are so interlaced that it is quite impossible to separate them or to disintegrate them, and I can conceive, although I am not expressing any definite opinion upon that point, that where you have such a case and where the main and substantial portion of the person's business is of a character bringing it within the Excess Profits Duty, it would be impossible to separate the part of the business chargeable from the part of the business not chargeable and therefore that the whole would become assessable. But the difficulty is a question which to my mind is largely a matter of fact, and where it is possible, as it seems to be in this case to disintegrate and divide the businesses, I think if you can separate the one from the other and find that the one so separated comes within the exception of the Act, there is nothing in law to prevent that being done."

Offices or Employments

These words come from the Income Tax Acts, and are self-explanatory. An *office* might be

15. Exceptions from charge.—(*contd.*)

described as an employment where there is scarcely an employer (*e.g.*, a clergyman's or a judge's office). It also refers to the position held by an officer of a company or other body, in which sense the section exempts directors, secretaries, etc., except as company officers may be charged under Rule 14. (See Rule 48, however.)

Robbins v. Commissioners of Inland Revenue (1920). The appellant was in the employment of an American company first as " general sales agent " and afterwards as " general sales manager." He had the exclusive right to sell the company's goods in the United Kingdom in return for his whole time services. The rent of the London office was paid by the company, who owned all stock-in-trade and goodwill, and who maintained a banking account into which all sums received for sales were paid, and on which the appellant had no power to draw. All business was done in the company's name.

The Commissioners considered that the term " agent of any description " was wide enough to include persons under contract of employment, but the High Court held otherwise. The words quoted did not refer to a whole time servant.

PROFESSIONS

This term is usually taken to refer to employments which have entailed book study and which do not entail mechanical work. Such callings are not employments within the meaning of the previous

15. Exceptions from charge.—(contd.)

paragraph, but they usually entail employment by one or (more usually) a number of persons. There is something in the term which excludes any use of the knowledge gained except by placing it at the call of others. Thus, an architect who erects houses at his own cost has become a builder and is not exempted in respect of his building profits. Similarly, a consulting engineer steps outside his profession when he becomes a manufacturer. Doctors, lawyers, accountants, are clearly within the exemption. An author is exempt, but not a publisher.

A curious feature of recent case law is the separation of a liable from a non-liable part of an undertaking. (See *Maxse* v. *Commissioners of Inland Revenue*, page 73.)

Certain Parliamentary references to professions are of interest. In the debate on the *Finance* (*No.* 2) *Act*, 1915, on 3rd November, 1915, Mr. Dickinson, M.P., stated: "I believe that any court would say that a profession was an occupation in which a person publicly engages himself." To meet criticism, Mr. Montagu (*Financial Secretary to the Treasury*) moved to leave out from Section 39 (*c*) the words "any profession the profits of which are," and to insert instead thereof "the profession of a barrister, solicitor, doctor, architect, accountant, and any other profession unconnected with the purchase or sale of property or commodities of any description and." This proposal did not give much satisfaction, and was therefore

15. Exceptions from charge.—(contd.)

withdrawn. It throws a certain light on the intended meaning of "profession," however.

In **Commissioners of Inland Revenue v, North & Ingram** (*King's Bench Division,* 1918), Messrs. North & Ingram owned and carried on a preparatory boarding school. They had purchased the business in 1906, paying £18,000 for the freehold of the premises, £1,497 for furniture and fixtures, and £3,800 for goodwill. Each partner took an active part in the school teaching, besides conducting the general management of the school. There were five assistant masters, two instructors, and a number of servants. The Special Commissioners had held that the business of a preparatory boarding schoolmaster was a profession, and that no distinction could be made in the present case on the ground that the respondents were the owners of the premises. The Court upheld the decision of the Commissioners. The business required definite personal qualifications on the part of the proprietors.

Sankey, J.: "Mr. Ingram, whose statements were accepted by the Commissioners as being entirely correct, says that while it was necessary for a preparatory boarding schoolmaster to provide a school-house with suitable accommodation, offices, playing fields and grounds, for the reception, recreation and training of the boys, it was not necessary for him to be the owner of the premises, although if he were the owner he would enjoy a greater freedom in the progress and development of the school. It was naturally admitted by Mr. Ingram that it was

15. Exceptions from charge.—(*contd.*)

necessary to have suitable furniture and fittings for the reception of the boys placed under his charge, and it was usual and general for such a master to be the owner of the furniture and fixtures so provided. Then it was contended, as I should have thought could not be disputed, that the success of such a school is largely dependent upon the personal qualifications of the master.

"Now does the business carried on in this case come within the words: 'Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on, and in which no capital expenditure is required, or only capital expenditure of a comparatively small amount'?

"Now, dealing with those latter words first—'in which no capital expenditure is required, or only capital expenditure of a comparatively small amount.' In my judgment those words do not refer to the capital which is actually being used, but refer generally and in general terms to capital expenditure required for a profession of the character set out in sub-paragraph (*c*). For example, it is stated in this case that, although it is better, and in this case it happens that, the respondent owned the freehold and therefore the capital expenditure in that respect is large, they might easily have had a long lease in which the capital expenditure would have been very much less. Or take for example another profession. It may be necessary in some professions to have a library which you

15. Exceptions from charge.—(*contd.*)

could purchase for a few hundred pounds; but if you like to have, as some people do, an exceptionally luxurious library with all your books bound in calf and gilt-edged, although the capital expenditure in fact might represent a larger sum, it is not capital expenditure 'required' for the profession which you are carrying out. It is in that case capital expenditure which gratifies you, but is not really necessary for the business."

His Lordship proceeded to emphasize the importance of the professional qualifications of a schoolmaster. He proceeded: "Which is it that produces the profits? In this case is it the furniture and fittings, or is it the experience and reputation and professional skill of those gentlemen who conduct and carry on this school? Having regard to the fact which I have already explained, that it is entirely unnecessary to have freehold premises, I do not think it necessary to discuss the fact that the freehold cost £18,000, and I think that (*Counsel*) is right in saying that the true test is the small amount which is necessary for the furniture and fixtures in this case, and, if you like to add it, the small amount for hiring leasehold premises, and I am satisfied that this is a profession in which only capital expenditure of a comparatively small amount is required. What is required is the skill and experience which these gentlemen are admitted to possess."

In **Maxse v. Commissioners of Inland Revenue** (*Court of Appeal*), Mr. Maxse was sole proprietor, editor, and publisher of the *National Review*, the sale of which he contended depended almost altogether on his personal contributions. He had owned the *Review* from 1893, but profits were made only since 1905. He employed a manager at a salary of £250, and two clerks. In February, 1914, Mr. Maxse personally contributed 63 pages out of 176. In December, 1914, his contributions increased to 135 out of 160 pages. The District Commissioners held that there was no liability to Excess Profits Duty, as the profits arose from a profession.

The High Court reversed this decision, finding that there was no evidence that the concern was a profession, the profits of which were dependent upon the personal qualifications of Mr. Maxse. If Mr. Maxse were unable to write for the magazine, its career might not be a long one; but that was quite uncertain. Mr. Maxse's income was derived from the sale of a magazine, but he was not an ordinary journalist.

The Court of Appeal varied the decision, ordering that Mr. Maxse's earnings as journalist should be distinguished from his profits as proprietor of the journal.

William Esplen, Son & Swainston, Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division*, 1919). In this case it was decided, in effect, that a company cannot carry on a profession within the meaning of the Excess Profit Duty exception. The company concerned in the case,

15. Exceptions from charge.—(contd.)

carried on the business of Naval Architects and Consulting Engineers. The business had previously been carried on by the existing shareholders and directors in partnership. Before the incorporation of the company the business was undoubtedly a profession.

Rowlatt, J., said that " the company does the business of naval architects and it consists of three naval architects ; but that does not bring it within the meaning of the section as being a profession. It is of the essence of a profession within the meaning of the section that the profits should be dependent on the personal qualifications of the person by whom the profession is carried on. The section refers to the personal qualifications of the individual only. The true analysis of the position is that the business which the company is doing is the work of naval architects. It sends naval architects to do the work. The company is not a profession within the meaning of the section, and therefore is not entitled to claim exemption from Excess Profits Duty."

Currie v. Commissioners of Inland Revenue (*King's Bench Division,* 1919). The appellant carried on business as " The Income Tax Payers' Appeal Agency." He did the ordinary work of an accountant, specializing in Income Tax matters. He was paid partly by fixed fees and partly by a percentage of the relief or repayment obtained. It was held that, in substance, the business did not depend upon commission, although part of the work was remunerated upon a percentage basis.

15. Exceptions from charge.—(*contd.*)

The appellant was, therefore, held to have carried on a profession, no part of which was chargeable to Excess Profits Duty.

Cecil v. Commissioners of Inland Revenue (*King's Bench Division,* 1919). It was held that the appellant, who carried on business as a photographer, was not within the exemption granted to professions. The appellant's work was proved not to be that of an ordinary photographer, as it showed peculiar artistic merit and individualism, and was akin to portrait painting. The Court held, however, that the Special Commissioners had evidence on which they were entitled to say that the appellant carried on a business.

See also *Christopher Barber* v. *Inland Reveune* (page 60) and *Charles Radcliffe* v. *Inland Revenue* (page 62).

CHAPTER III

Periods and Accounts Concerned

PERIODS AND ACCOUNTS CONCERNED—WHERE ACCOUNTS ARE NOT MADE UP—MEANING OF "LAST PRE-WAR TRADE YEAR."

16. The profits shown in all accounts "made up" (not necessarily formally) to dates later than 4th August, 1914, are required to be reviewed for purposes of Excess Profits Duty. The period covered by such an account is called an "accounting period." **16. Accounting period.**

In any accounting period which ended after the fourth day of August, nineteen hundred and fourteen, and before the first day of July, nineteen hundred and fifteen. . . . (*Finance* (*No.* 2) *Act*, 1915, *s.* 38 (1).)

Any accounting period ending on or after the first day of July, nineteen hundred and fifteen, and before the first day of August, nineteen hundred and seventeen. . . . (*Finance Act*, 1916, *s.* 45 (1).)

Any accounting period ending on or after the first day of August, nineteen hundred and seventeen, and before the first day of August, nineteen hundred and eighteen. . . . (*Finance Act*, 1917, s. 20 (1).)

The accounting period shall be taken to be the period for which the accounts of the trade or business have been made up. (*Finance* (*No.* 2) *Act*, 1915, *s.* 38 (2).)

It is hereby declared that, for the purpose of subsection (2) *of section thirty-eight of the principal Act, any period for which the books of a trade or business have been actually made up for any interim or other purpose in such a manner*

16. Accounting period.—(*contd.*) *that the profits for that period can be readily ascertained is (without prejudice to the powers of the Commissioners of Inland Revenue under that provision)*[1] *to be taken as an accounting period, notwithstanding that under the articles of association of the company carrying on the trade or business or under any other regulations affecting the carrying on of the trade or business the accounts are also required to be made up for some other period, and notwithstanding that such accounts are not issued.* (*Finance Act,* 1916, *s.* 51.)

It should be noted that the first Act dealing with this matter imposed the duty for all accounting periods ended before 1st July, 1915, leaving the subsequent Acts to continue the charge. The date referred to was the date from which certain concerns became "controlled" by the Minister of Munitions, and subject to the levies to be made under the Munitions of War Acts.

The Finance Act of 1916 extended the charge to accounting periods ended before 1st August, 1918. It also made special provisions with regard to the controlled concerns referred to above. The Munition Acts levies and the Excess Profits Duty charges on these concerns are referred to in Chapters XVIII to XX.

The Finance Act of 1917 extended the charge to accounting periods ending before 1st August, 1918. As from 31st December, 1916, the Munitions Act levies ceased. See Chapter XX.

The Finance Act of 1918 extended the charge

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[1] See Rule 17.

16. Accounting period.—(contd.)

to accounting periods ending before 1st August, 1919. The Finance Act of 1919 extended the charge to accounting periods ending before 1st August, 1920, and the Finance Act of 1920 to accounting periods ending before 5th August, 1921.

As regards the alteration of the rate of charge from 50% to 60%, enacted by the Finance Act of 1916, from 60% to 80% enacted by the Finance Act of 1917, from 80% to 40% enacted by the Finance Act of 1919, and from 40% to 60% enacted by the Finance Act of 1920, see Rule 4.

Pre-war months included in the charge.—It is evident that the earliest accounting period of practically every business will include certain pre-war months. They are, nevertheless, included in the "during-war" period. The profits of the twelve months ended 31st December, 1914, are treated exactly the same as those of the six months ended 31st January, 1915. (See Rule 3 as regards the comparison of a short accounting period with a proportionately diminished pre-war standard.)

See the following comments as regards the inclusion of pre-war periods of various lengths.

Mr. Montagu (*Financial Secretary to the Treasury*), in the discussion on the *Finance* (*No.* 2) *Act* 1915, on 27th October, 1915: "When we come to the last accounting period, which contains a peace element and a war element—the difference depending upon the different dates on which firms make up their books will equalize themselves at the end of the war, exactly in the same way in which

16. Accounting period.—(contd.) they are unequal at the commencement of the war."

Mr. McKenna (*Chancellor of the Exchequer*) in the discussion on the *Finance Bill* 1916 on 26th June, 1916 : "The principle of the tax is that both A and B shall be taxed for excess profits over the same number of years. The Excess Profits Tax does not come to an end at a fixed date. It will come to an end, say, at the end of four accounting years. In that case it will come to an end for every firm when every firm has been taxed four times."

The trader's accounts.—Excess Profits Duty is in no way limited or calculated by reference to the fiscal year. Subject to the provision set out in Rule 17, a trader may make up his accounts when it pleases him, and for whatever period he pleases. The Act merely requires the review of the profits of that period, and is content to await the next making up of accounts before going further.

Accounts may have been "made up" for shorter periods than those covered by the accounts which have been printed or furnished to the Inspector of Taxes for Income Tax purposes. They may not have been "made up" within the ordinary meaning of the term and may yet provide the basis for an assessment. The question is whether the profits "can be readily ascertained" from them.

The taking of stock,[1] in some form or another, will frequently be a vital point in this connection. It may be assumed that the actual "taking" of

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[1] See Chapter XI as regards Stock valuation.

16. Accounting period.—(*contd.*)

stock, inventory-wise, is not always essential, inasmuch as the nature of some businesses prevents this process from being gone through even when formal accounts are to be issued. But no general rule is possible as to the minimum amount of consideration which must have been given to the valuation of stock. If the profit can be ascertained sufficiently closely for any vital purpose (*e.g.*, the payment of an interim dividend, or a manager's report to his directors) the absence of a detailed stock-taking will not, for Excess Profits Duty purposes, necessarily rule out the account in question. (See the decisions set out at the end of this Rule.)

The words of the Act are "*can* be readily ascertained," and not "*have been* ascertained." The point may be illustrated by reference to the voyage accounts of a single-ship company. Thus—

YEAR ENDED 31ST DECEMBER, 19...

	£		£
Office expenses	180	Gross profit—	
Salaries and directors' fees	700	Voyage No. 1	1,235
Loan Interest	40	,, 2	1,764
Balance	3,467	,, 3	988
		,, 4	400
	£4,387	(No. 4 uncompleted; profit estimated to date)	£4,387

There can hardly be anything improper in apportioning the office expenses, salaries, etc., and interest over the respective voyages according to the duration of each. The account would in this case present three accounting periods, voyage No. 4 standing over until it is completed.

16. Accounting period.—(contd.)

The Chancellor of the Exchequer refused, in 1916, to accept an amendment by which any date to which the accounts " can be " made up (as well as " have been " made up) should be taken as closing an accounting period. No concern may say, therefore, that accurate accounts could now be prepared by making up the books to a date to which they were not in fact made up. In the example just given it is clear that *some* making up of the books took place at interim dates (*i.e.*, the balancing of the voyage accounts). Had the company owned several ships, the result of each of whose voyages had been separately computed, the result could hardly have been the same in this connection. For when one ship's voyage had ended, the voyages of others would be proceeding, and the books had not been made up at any interim dates in such a manner that the company's aggregate net profits could be readily ascertained.

John Marston, Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). The accounts of the company were made up and audited as at 31st August in each year, and the Commissioners of Inland Revenue treated the year ending 31st August, 1914, as the first accounting period. The company's auditors then prepared annual accounts for years ending 31st July. These amended accounts were constructed from the audited accounts by an estimation of the result of trading in August of each year. It was arrived at by taking certain expenses as one-twelfth part of the total for

16. Accounting period.—(*contd.*)

the whole year, and stock was taken at an approximate figure. It was decided by the Special Commissioners and confirmed in the High Court that the books of the company were not actually made up to any date other than the 31st August within the meaning of Excess Profit Duty law.

Rowlatt, J.: (After stating that the "making up" referred to in Section 38 of the 1915 Act and Section 51 of the 1916 Act both referred to "the *de facto* past practice of the firm")—"They every month had totalled their cash book, their purchase book, their sale books, and their journals, but no monthly statement of accounts was declared. The Commissioners had held that the totalling of these books was not a making up of the books. I am not omitting to notice that it is books and not making up accounts, not an actual making up of the books for interim or other purposes so that the profits for the period can be regularly ascertained. They subsequently made up a new form of accounts, only they adjusted the figures to make them end on the 31st July. The Commissioners said, however, that the books were not made up, and whichever they referred to it seems to me they are right. If they refer to the first they were not made up at all, the monthly totalling; if they refer to the new annual account, which was prepared, they say, *ex post facto*, it seems to me to have nothing to do with it. I am clearly of opinion this appeal fails."

James Cycle Co., Ltd., v. Commissioners of Inland Revenue (*King's Bench Division,* 1919). The

16. Accounting period.—(*contd.*)

accounts of the company were made up and audited as at 31st August in each year. The books were totalled every month and balanced every quarter. Stock was actually taken every year, but the quarterly accounts were correct, except the stock values therein were estimated. The General Commissioners decided on appeal that the books of the company were not made up quarterly within the meaning of Section 51 of the Finance Act, 1916. This decision was confirmed in the High Courts.

Rowlatt, J.: "What the Commissioners decide is that in these quarterly accounts the profit for each quarter (quoting from the case stated by the Commissioners), 'was not the profit for that quarter, but merely a profit for the year distributed over the quarters of the year, and that it was impossible from books kept as those of the appellant company were, and from such quarterly accounts, to ascertain readily, or indeed to ascertain at all with any approach to accuracy, the profits of such quarters without either actually taking stock, or without the keeping of elaborate and accurate stock accounts.'

"It seems to me the purest question of fact imaginable, upon which these Commissioners had much better means of coming to a right conclusion than I have.

"Then it is pressed upon me that that brings the amending section (Section 51 of the Finance Act, 1916) to nothing because, they say, it is practically asking for as good an account for the shorter period as the fullest possible account could be. I am not

16. Accounting period.—(*contd.*)

going to assume that at all. It is very possible that there are interim accounts which are good enough without coming up to the standard which would have been perhaps required for an annual account, but I say nothing of course upon that."

O'Kane & Co. v. Commissioners of Inland Revenue (*Irish Divisional Court,* 1920). This case had to do with stock disposed of otherwise than in the course of trade prior to the operation of the *Finance Act,* 1918, *Section* 35 (1). (Rule 79.)

The partners of the business issued a circular on 1st March, 1916, stating that they had decided to retire from business and asking for a settlement of accounts. A few weeks later a descriptive list of stock in hand (spirits in bond) was issued, and in 1917 the disposal of the stock was completed. The Special Commissioners found realization to be *bona-fide,* and the Court held that this being so, the extension of the realization over a short period could not constitute the carrying on of a trade or business in 1917.

17. Where Commissioners fix end of accounting period.

17. The closing day of the accounting period may be fixed by the Commissioners of Inland Revenue—

(*a*) Where accounts have not been made up for any definite period ;

(*b*) Where accounts have not been made up for the period for which they are usually made up ;

(*c*) Where a year or more has elapsed without accounts being made up.

The accounting period ended on the day so fixed by the

17. Where Commissioners fix end of accounting period.—(*contd.*)

Commissioners of Inland Revenue may not be shorter than 6 months or more than a year.

Where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up (the accounting period) *shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 38 (2).)

Where accounts have not been made up for any definite period.—An account might easily consist of a series of separate statements showing the result of a series of isolated transactions. Thus, taking an obvious case—

		£
1st June.	Bought picture . . .	140
3rd ,,	Sold ,, . . .	170
		30
	Expenses	14
	Profit	£ 16

A series of entries such as these might never be brought together for comprehensive review. For Income Tax purposes, the period reviewed would end on 5th April. For purposes of the tax under consideration, the Commissioners of Inland Revenue may fix the date on which the accounting period must end.

Where accounts have not been made up for the usual period.—A certain amount of evasion would

17. Where Commissioners fix end of accounting period.—(*contd.*)

often be possible without this provision. The profits of many trades are seasonal, and in the past the trader is fairly certain to have closed his accounts at a suitable date. For purposes of Excess Profits Duty, he may not unfairly change that date.

Where a year or more has elapsed without accounts being made up.—The context suggests that "made up" does not refer to the pen-and-ink operation of drawing out a statement of trading. Thus, a firm could not say: "Our account to December, 1913, was actually prepared in July, 1915. We cannot be interfered with until July, 1916." The last account was rather made up at December, 1913, and the provision in question would operate.

If an account covers a period of longer than a year, the Commissioners of Inland Revenue are clearly entitled to require the division of that period. But it does not follow that the whole of such period will be reviewed for Excess Profits Duty purposes. Thus, if the accounts of a concern have been closed as follows;

(*a*) 1st June, 1911, to November 30th, 1912;

(*b*) 1st December, 1912, to 31st October, 1914; a portion of (*b*) must be reviewed and the Commissioners of Inland Revenue may take any date between 4th August, 1914, and 31st October, 1914, as the last day of an accounting period on the excess profits of which duty shall be charged. Let it be assumed that the day fixed is 30th September, 1914. When will the accounting period *commence?*

17. Where Commissioners fix end of accounting period.—(*contd.*)

This is a matter for agreement between the assessing authority and the taxpayer. In the absence of agreement the matter appears to be one for determination by the assessing authority, as only the *amount* of an assessment can form the subject of an appeal. (Rule 116.) It is possible, however, that in particular cases the General or Special Commissioners might consider that as the length of the period affected the amount it was within their province to amend the same. In any case a period ending 30th September, 1914, must not commence before 1st October, 1913, or after 1st April, 1914. The second accounting period would run from 1st to 31st October, 1914. The three pre-war years, on the profits of which the pre-war standard may be based, will be deemed to have ended on the day before that on which the first accounting period commenced. (See Rule 18.)

Where accounts have been closed as suggested in the example given above, it will be a difficult matter for the profits of artificial accounting periods and pre-war trade years to be determined. This must be done, however, and any disagreement will be settled by way of appeal.

18. Last pre-war trade year.

18. For purposes of comparing " during-war profits " with " pre-war profits," the last pre-war trade year must be taken to have ended when the first " accounting period " began.

" The last pre-war trade year " means the year ending at the end of the last accounting period before the fifth day of August, nineteen hundred and fourteen, and " the last

three pre-war trade years" means the three years ending at the three corresponding times. (*Finance* (*No.* 2) *Act*, 1915, *s.* 40 (2).) **18. Last pre-war trade year.—(*contd.*)**

The precise method of computing pre-war profits, for purposes of comparison, is explained in Chapter IV. The above provision secures that the pre-war months included in the first accounting period shall not be included also in the pre-war years; also that there shall be no gap between the periods.

When the pre-war trade years do not synchronize with the periods covered by the trader's accounts, the profits of the pre-war trade years must be determined as well as may be (usually by apportionment according to time). Appeal may be made to the General or Special Commissioners on this point.

CHAPTER IV

Pre-War Standard of Profits

PRE-WAR STANDARD OF PROFITS MAY BE PROFITS STANDARD OR PERCENTAGE STANDARD—HOW THE PROFITS STANDARD IS CALCULATED—YEARS OF ABNORMAL DEPRESSION—CONCERNS INCLUDING SEPARATE INDUSTRIES WITH PRE-WAR LOSSES—HOW THE PERCENTAGE STANDARD IS CALCULATED—WHEN IT APPLIES—THE NORMAL STATUTORY PERCENTAGES—SPECIAL PERCENTAGES—WHERE THE CAPITAL AT STAKE IS LARGER THAN THE CAPITAL EMPLOYED—MUNITION WORKS—SUBSTITUTED STANDARD.

19. Pre-war standard.

19. The pre-war standard of profits may be arrived at in either of two ways. The first method results in a profits standard (Rule 20) and the second in a percentage standard (Rule 24). In the case of small concerns, a "substituted standard" is sometimes permitted. (Rule 31.) The taxpayer aims at a high standard.

The necessary notes are attached to Rules 20 to 23 (profits standard), Rules 24 to 29 (percentage standard), and Rule 31 (substituted standard).

20. Profits standard: how computed.

20. In order to arrive at the profits standard the taxpayer selects two out of the last three pre-war trade years and ascertains their average profit. The result constitutes the profits standard.

The pre-war standard of profits for the purposes of this Part[1] *of this Act shall, subject to the provisions of this Act,*

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[1] *i.e.*, the Part relating to Excess Profits Duty.

be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last pre-war trade years, to be selected by the taxpayer (*in this Part*[1] *of this Act referred to as the profits standard*). (*Finance* (*No.* 2) *Act,* 1915, *s.* 40 (2).)

20 **Profits standard: how computed.—(*contd.*)**

The taxpayer obviously selects the years which will produce the highest standard, as the larger the standard, the smaller is the excess. Nevertheless the varying effect of Rules 98 to 100 should be observed.

(See Rule 18 as to the last three pre-war trade years.)

The profits are computed in accordance with the rules set out in Chapters VI to XIII.

21. Profits standard: computed under same rules as profits of accounting period.

21. In ascertaining the profits standard the profits of pre-war trade years must be computed under the same rules under which the profits of the accounting period are computed.

The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 1.)

It is naturally important that a fair basis for comparison should be secured. The above rule might also be a necessary direction in the making of adjustments. (*E.g.*, see under *Repairs,* page 144.)

See also page 145 as regards this. A change in law may necessitate the computation of the profits of a new Accounting Period on a basis different from that on which were computed the profits of former Accounting Periods. In such a case, the Profits Standard must be recomputed.

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[1] *i.e.*, the Part relating to Excess Profits Duty.

21. Profits standard: computed under same rules as profits of accounting period.—(*contd.*)

In **Macinnes v. Guthrie Craig, Peter & Co., Ltd.** (*Court of Sessions*, 1918), the Company purchased its business premises on 11th November, 1914, subject to Feu Duty. The pre-war standard was arrived at after deducting the rent of the premises. The Commissioners permitted the deduction of a similar amount from profits of the accounting period, but the Court held that there was no statutory authority for such a deduction.

Lord President: "The Commissioners have given effect to the contention which I see was advanced by the Managing Director of the appellant company, that one of the underlying principles of the Excess Profits Duty was that the conditions obtaining in the one case should be as closely alike as possible to the conditions prevailing in the other period, in order to secure a fair comparison of like with like. The Statute makes no such provision. The Statute only says that the profits of the pre-war period are to be computed on the same basis and subject to the same conditions as in the accounting period."

22. Abnormal depression in pre-war years.

22. The taxpayer may take as his profits standard the average profits of any four out of the last six pre-war trade years where both of the following conditions apply—

(*a*) The Commissioners of Inland Revenue must be satisfied that the last three pre-war trade years were years of abnormal depression ;

(*b*) The average profits of the last three pre-war trade years must be at least 25 per cent. lower than the average profits of the three years preceding them.

22. Abnormal depression in pre-war years.—(*contd.*)

Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years. The three last pre-war trade years shall not be considered as years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits of the preceding three years. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 3.)

(See Rule 18 as regards "last three pre-war trade years.")

Conditions (*a*) *and* (*b*) *are not synonymous.*—It is quite possible for (*a*) to apply and not (*b*). The last three trade years might be years of abnormal depression, without being sufficiently worse than the three preceding years to come within (*b*).

Thus—		£			£
1913.	Profit . .	200	1910.	Profit. .	1,400
1912.	„ . .	100	1909.	„ . .	1,100
1911.	„ . .	180	1908.	Loss . .	1,980
	Profit	£480		Profit	£520

The profits of each of the six years must be computed according to the rules under which the profits of the accounting period are computed (Rule 21).—It follows that all adjustments allowed or required to be made in ascertaining the profit of the accounting period must be made also for purposes of the comparison allowed under (*b*).

23. Profits standard: concern including independent industries.

23. Where the Commissioners of Inland Revenue are satisfied that a concern includes two or more independent industries carried on in separate establishments and with substantially separate accounts, they may, in computing the profits standard for the purposes of dealing with any accounting period ending after 31st December, 1916, ignore losses made in any pre-war year in any of the industries.

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December nineteen hundred and sixteen, the following provisions shall have effect—

Where the Commissioners are satisfied—

(a) *that in connection with any trade or business two or more distinct and independent industries are carried on in separate establishments, and with books kept in such a manner that the profits in respect of each industry can be readily ascertained; and*

(b) *that in any year by reference to which the pre-war standard of profits is calculated a loss has been sustained in respect of any one or more of such industries;*

the Commissioners may, i they think fit, in computing the profits standard, disregard that loss. (*Finance Act,* 1917, *s.* 26 (5).)

The reason for this rule is as follows—

A company may have decided to undertake work of a kind quite distinct from that previously undertaken, with the knowledge that it would make losses for a few years, but that profits would ultimately arise. The losses may have arisen in the pre-war years and the profits in the Accounting

23. Profits standard: concern including independent industries.—(*contd.*)

Periods, in which case the standard is depressed and the excess raised.

Thus, take the case of a motor manufacturing company which in 1911 commenced the manufacture of aeroplane parts. The profits and losses might have been as follows—

	Year.	*Motors.*	*Aeroplanes.*	*Aggregate.*
		£	£	£
	1910 .	.*P* 50,000	—	*P* 50,000
Three pre-war years	1911 .	.*P* 50,000	*L* 30,000	*P* 20,000
	1912 .	.*P* 50,000	*L* 20,000	*P* 30,000
	1913 .	.*P* 50,000	*L* 10,000	*P* 40,000
	1914 .	.*P* 50,000	*P* 5,000	*P* 55,000
	1915 .	.*P* 80,000	*P* 20,000	*P*100,000
	1916 .	.*P* 80,000	*P* 40,000	*P*120,000
	1917 .	.*P* 80,000	*P* 40,000	*P*120,000

Apart from the operation of Rule 23, the Profits Standard would be—

$$\frac{£30{,}000 + £40{,}000}{2} = £35{,}000.$$

It was felt to be hard that a company whose normal pre-war profits were £50,000 should have its standard reduced because of losses in a new branch deliberately incurred with the view subsequently of making profits which prove to be liable to Excess Profits Duty.

The Revenue is, therefore, accorded the

23. Profits standard: concern including independent industries.—(*contd.*)

discretionary power to ignore the losses of £20,000 and £10,000. The standard would be

$$\frac{£50,000 + £50,000}{2} = £50,000,$$

which would be compared in due course with during-war profits of £55,000, £100,000, £120,000, etc.

The Rule has no other effect. Thus, the capital computation (Chapter XIV) is quite unaffected.

It should be noted that the Rule can operate only at the discretion of the Revenue. In such a case as the following it could not reasonably be invoked.

	Year.	*Coalmine.*	*Ironworks.*	*Aggregate.*
		£	£	£
	1910 .	*P* 50,000	—	*P* 50,000
Three pre-war years	1911 .	*P* 50,000	*L* 30,000	*P* 20,000
	1912 .	*P* 50,000	*L* 20,000	*P* 30,000
	1913 .	*P* 50,000	*L* 10,000	*P* 40,000
	1914 .	*P* 50,000	*L* 20,000	*P* 30,000
	1915 .	*P* 80,000	*L* 20,000	*P* 60,000
	1916 .	*P* 80,000	*L* 10,000	*P* 70,000
	1917 .	*P* 80,000	*L* 20,000	*P* 60,000

In this case the pre-war loss cannot be ignored until the during-war years show an appreciably better result.

The need for the industries to be independent one of the other, and for separate accounts, etc., to be kept, will be noted.

24. The percentage standard is the "statutory percentage" on the capital of the concern at the end of the last pre-war trade year.

24. Percentage standard: how computed.

The percentage standard shall, for the purposes of this Part[1] *of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 40 (2).)

Rule 18 shows that the last pre-war trade year ended on the day preceding the commencement of the first accounting period.

It will be observed from the succeeding Rules that, under the Finance (No. 2) Act, 1915, and the Finance Act, 1916, the "statutory percentage" was usually 6 per cent. or 7 per cent., but that in certain cases higher percentage rates were substituted. The Finance Act, 1917, made the percentages 6 and 8 respectively, subject to the same increases as previously.

The "capital" on which the percentage is calculated is an amount computed in accordance with the rules contained in Chapter XIV. It is by no means certain that this is the amount which the trader himself would describe as his capital.

25. The percentage standard is usually adopted when it is higher than the profits standard.

25. Percentage standard: when adopted.

Provided that if it is shown to the satisfaction of the

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[1] *i.e.*, the Part relating to Excess Profits Duty.

25. Percentage standard: when adopted.—(*contd.*)

Commissioners of Inland Revenue that the amount[1] *was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 40 (2).)

It is evident that the higher the standard is, the smaller will be the excess over that standard. Nevertheless it must be remembered that, if the capital of the profits standard period is larger than the capital on which the percentage standard is based, it may be advantageous to adopt the percentage standard even though it is higher than the profit standard. (The same thing holds with percentage standard and profits standard transposed throughout.) Thus—

Percentage Standard 6 % on £100,000 =	£6,000
Profits Standard (capital[2] £120,000) =	£6,500

But an allowance is made in every accounting period's computation by reference to the excess of the capital of that period over the capital attached to the Standard adopted. In the case given that allowance will always be larger if the Percentage Standard is adopted, *e.g.*—

Capital for accounting period . .	£150,000
Increase in capital—	
if Percentage Standard is taken .	£50,000
if Profits Standard is taken . .	£30,000
Difference . .	£20,000

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[1] *i.e.*, the Profits Standard—Rule 20.

[2] *i.e.*, the Capital in the years on the profits of which the Standard is based.

The allowance for increased capital will be larger in the former case by at least 6 % on £20,000 = £1,200, which makes the Percentage Standard of £6,000 virtually £700 (£1,200 − £500) higher than the Profits Standard of £6,500.

25. Percentage standard: when adopted.—(*contd.*)

The letter of the law does not allow this consideration to be taken into account, but the intention seems to have been to permit it.

26. Statutory percentage.

26. The statutory percentage is 6 per cent. in the case of a company or other body corporate. It is 7 per cent. in other cases (i.e., sole traders and partnerships), except as regards accounting periods ending after 31st December, 1916, when it is 8 per cent.

For accounting periods ending after 31st December, 1919, certain private companies whose directors have a controlling interest may claim the 8 per cent. granted to sole traders and partnerships.

(See Rule 50.)

The statutory percentage shall be six per cent. in the case of a trade or business carried on or owned by a company or other body corporate, and seven per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases. (*Finance* (*No.* 2) *Act,* 1915, *s.* 40 (2).)

In the application of Part III of the principal Act to excess profits duty for any accounting period ending after the thirty-first day of December, nineteen hundred and sixteen, the following provisions shall have effect—

. . . .

The statutory percentage shall, in the case of a trade or business not carried on or owned by a company or other body

26. Statutory percentage.—(*contd.*)

corporate, be taken to be eight per cent. instead of seven per cent.; and, accordingly, subsection (2) *of section forty of the principal Act shall have effect as though eight per cent. were substituted for seven per cent.* (*Finance Act,* 1917, *s.* 26 (2).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December nineteen hundred and nineteen, the following provisions shall have effect—

. . . .

Any trade or business carried on or owned by a company or other body corporate whose directors have a controlling interest shall, for the purpose of the provisions of the principal Act relating to the statutory percentage as amended by any other enactment, be treated as if it were a trade or business carried on or owned by a body other than a body corporate:

In this paragraph the expression "director" includes any person engaged in the management of the trade or business whose remuneration is provided out of the funds of the trade or business. (*Finance Act,* 1920, s. 45 (2).)

See the succeeding Rule as regards special rates.

[N.B.—The "statutory percentage" was, until the Finance Act, 1917, identical as regards the same concern for all the purposes of Excess Profits Duty. That is not now the case for periods ended after 31st December, 1916. See Rule 98, as regards allowances for increased capital, and Rule 99 as regards adjustments for decreased capital.]

The difference between the allowance to companies and to other concerns evidently has reference to the payments to officers to which the former

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26. Statutory percentage.—(contd.)

are liable. This difference was first taken as 1% (7 % minus 6 %) of the capital, but experience proved that 2 % (8 % minus 6 %) was more in accordance with the facts. The normal operation of the rule for periods ended prior to 31st December, 1916, is as follows—

Profits to 28th February, 1912. . .	£2,400
,, ,, 1913. . .	3,100
,, ,, 1914. . .	2,700
,, ,, 1915. . .	3,800
Capital at 28th February, 1914. . . .	£50,000

The profits standard would be $\frac{£3,100 + 2,700}{2}$

$= £2,900$

The percentage standard is $\frac{6}{100} \times £50,000 =$ £3,000 for a company; or $\frac{7}{100} \times £50,000 = £3,500$ for other concerns.

The percentage standard, therefore, becomes the standard of profits. Duty payable is calculated as follows—

	Company.	Other Concern.
	£	£
Profit of accounting period	3,800	3,800
Standard of Profit . .	3,000	3,500
Excess	800	300
Allowance . . .	200	200
	2)600	2)100
Duty (at 50 %) .	£ 300	£ 50

26. Statutory percentage.—(*contd.*)

The above example must not be taken to suggest that a company is more severely treated than a single trader or a firm. The fact is, rather, that it was thought that where the latter made a profit of £3,500, a company which had directors' fees, etc., to pay, would expect to make £3,000 only.

For late periods the standard for the "other concern" is 8 % on £50,000 = £4,000. The excess becomes a deficiency of £200.

Periods ending after 31*st December,* 1919.

Concession to private companies whose directors have a controlling interest.

It has been stated that both as regards the percentage standard and the allowance for increased capital, a distinction is made between companies or other bodies corporate and firms or sole traders.

This distinction is that the percentages at which allowances are computed are 2 per cent. smaller in the case of companies, etc., than in other cases.

The reason given has been that companies, etc., may reduce their profits by charging much of the remuneration payable to directors, etc.; whereas, in the case of firms and sole traders, the remuneration of proprietors may not be deducted from profits. The 2 per cent. has therefore been a "counterbalancing" disadvantage.

But it has been evident that, in the case of companies conducted by principal shareholders, the Revenue has been unable to allow any deduction

26. Statutory percentage:—(*contd.*)

in respect of the remuneration of the persons concerned in excess of the deduction in the last pre-war year. In law, therefore, such companies have had the disadvantage attaching to a firm, and yet they have also been penalized by the 2 per cent. reduction.

This is now put right. Where the directors of a company have a controlling interest therein, the statutory percentage is to be the same as in the case of a firm. In this connection, " director " includes any person engaged in the management of the trade or business, whose remuneration is provided out of the funds of the trade or business.

The result of this concession, taken with other rules, is as follows—

	1920.		
	Statutory Percentage.	Increased Capital Allowance. Rule 98	Decreased Capital Adjustment. Rule 99
Firms and sole traders	8%	13%	7%
Companies whose directors, etc., have controlling interest	8%	13%	7%
Other companies .	6%	11%	6%

27. Statutory percentage: increase by Referees for any class of trade or business.

27. The Board of Referees may, on application, order the increase of the statutory percentage as respects any class of trade or business.

Any increase ordered is to be in addition to any increased percentage allowed as regards accounting periods ended after 31st December, 1916. (*Rules* 26, 34 *and* 98.)

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

The Board of Referees may, on application, reopen a case and vary their previous order thereon.

(See enactment after Rule 30.)

It will be observed that the above Rule refers only to a *class* of trade or business. The individual taxpayer has no right to make application except as representing a class. When the Referees have dealt with a particular class of trade or business, their decision binds all members of that class.

An extremely liberal interpretation may be expected as to what constitutes a class. (See page 112.) Any distinctive features marking off one set of businesses from another may be said to constitute a class. If a *primâ facie* case were established, for example, that a printer of books should not be bound by a decision respecting ordinary commercial printers, by reason of more or less capital being required for the production of equal profit, there is no doubt that the two classes might be the subjects of separate applications.

The question as to what would justify the increase of the statutory percentage for any class is one for the Referees alone. But it may be suggested by way of example that, where a business involves the rapid wasting of an asset in respect of which no depreciation allowance may be made, that business should be accorded a higher rate than the ordinary. (A colliery, for example, has to make sufficient " profit " to cover the exhaustion of the mines and the sinking of fresh pits.) Similarly, where there is a large element of risk (theatres, cinemas, etc.) capital can be attracted only by the prospect of a higher return than the normal. Again, some concerns must expect a return high enough to make good losses which are inevitable in the early years of development (*e.g.*, rubber companies).

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

At the date of going to press the following increases in statutory percentages have been allowed by the Referees.

	[1] *Additional percentage.*
Agriculture in Greece	6
Aircraft Engine Manufacture	3
Aircraft Manufacture	9
Alluvial Tin Mining in Nigeria	7
Aluminium Production	1½
Antimony Mining and Smelting in Mexico	11
Antimony Smelting	Nil
Asbestos mining in Rhodesia	10
Balata Collection, Preparation and Sale of	4
Cement Manufacture (excluding cement for plastering, etc.)	½
Chrome Ore Mining in New Caledonia	16½
Cinchona Tree Cultivation in India	4
Cinemas	5
City Drainage in Chile	1½
Coal Mines in Assam	4
Coal Mines in Bengal	4
Coal Mines in Great Britain	3
Coal Mines in Rhodesia	4

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[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98.

27. Statutory percentage: Increase by Referees for any class of trade or business.—(*contd.*)

	[1] *Additional Percentage.*
Coal Mines in Union of South Africa	3
Cocoanut Growing in the Middle East	4
Cocoanut Growing in British West Indies	5½
Cocoanut and Palmyra Palm Manufactures in Southern India and Ceylon	2½
Coffee Growing in East Indies	3
Coke Manufacture	2
Coke Manufacture in Rhodesia	3
Cold Storage	1½
Copper Mining and Smelting in California	4
Copper Mining in Chile	4
Copper Mining in Rhodesia	9
Cotton Production in the Soudan	6
Drapers and General Storekeepers in Brazil	1½
Electric Light and Power in Argentine	3
Electric Light and Power in Hankow	3
Electric Supply in India	1
Electric Supply in London	1
Electric Supply in the Provinces, etc.	1½
Electric Supply in Victoria	1½
Electric Traction at Shanghai	3
Electric Tramways in Cape Colony	1½
Electric Tramways in India	1
Electrical Cable Manufacturers	1
Electrical and Pneumatic Power in Transvaal	3
Electrical Energy, Supply of in United Kingdom by Companies incorporated by Private Act of Parliament	1½

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[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

	Additional Percentage.[1]
Electrical Machinery, etc., Manufacture of	1
Electrode Manufacture	Nil
Engineering in Bengal	2
Erinoid Manufacture	1½
Explosives, Manufacture of	2
Ferro-Concrete Shipbuilding	9
Fireclay Mining and Manufacture	1
Flax Preparation in Great Britain	4
Flour Milling in South America	1½
Gas Mantles (Incandescent) Manufacture	3
Gold Mining in Brazil	7
Gold Mining in British India	21½
Gold Mining in Colombia	9
Gold Mining in Egypt	21½
Gold Mining in Rhodesia	16½
Gold Mining in West Africa	16½
Grain Export from Argentine	1½
Hosiery Manufacture	Nil
Importers of Table Glassware	Nil
Indigo Growing	6
Iron and Steel Manufacture in Bengal	4
Iron and Steel Manufacture from Scrap in South Africa	4
Iron Ore Mining in Algeria	8
Iron Ore Mining in the Iberian Peninsula	4
Jute Merchants	Nil
Jute Spinning, etc., in Bengal	7
Lands Development in Egypt	
Lands Reclaimed in Egypt	ne

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[1] The figures in this column should be added to normal percentages referred to in Rules 26 and 98.

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

	[1] *Additional Percentage.*
Lead Mining in Italy	2
Lead Mining in Western Australia .	8
Lending Money on Mortgage in Mauritius	1½
London Omnibuses	2
London Wholesale Tea and Coffee Dealers	Nil
Magnet Manufacture	5
Magneto Manufacture	5
Magnesite Mines in Greece . . .	4
Manganese Ore Mining in Great Britain.	10
Manganese Ore Mining in Iberian Peninsula	6½
Manganese Ore Mining in India . .	4
Mangrove Products (Borneo) . .	4
Marine Salvage	9
Merchants in Philippine Islands . .	1½
Metalliferous Ores in Burma . .	6½
Metals and Alloys for High Speed Steel Production	6
Military Ornaments, etc., Manufacture of.	2½
Motor Manufacture	1
Music Halls (except (1) theatrical plays, and (2) cinematograph shows if substantially the whole of the entertainment)	5
Myrasolam Production in India . .	5
Newspapers (mainly dissemination of news and not comment on) in Scotland .	2
N[illegible]l Mining in New Caledonia . .	2
Elec[illegible]ate Extraction in Chile . . .	3
I Producing in California . . .	2½
il Producing in Persia . . .	5

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[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98.

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

	[1] *Additional Percentage.*
Oil Producing in Trinidad	8
Oil Raising in Assam	2
Oil Raising in Burmah	2½
Oil Raising in Caucasus	4½
Oil Raising in Peru	2½
Oil Raising in Roumania	2½
Oil Raising in South Russia	8
Pahang Consolidated Company	10
Paint, Colour, and Varnish Manufacture	Nil
Petroleum Production in Egypt	8
Pig Iron Manufacture	1
Portland Cement Manufacture in South Africa	2½
Potato Flake Manufacture	Nil
Provincial Omnibuses	2
Quibracho Tree, Extraction of Essences from	3
Rice Growing in East Indies	1
Road-making Material, Manufacture of	2½
Rubber Growing	4
Rubber Production in Bolivia	4
Shale Mining in Scotland	3½
Sheep Farming in Chile and Patagonia	5
Ships	Nil
Silica Ware Manufacture	2
Sisat in British East Africa	4
Spelter Manufacture	1
Stallions, Thoroughbred, for Service	7
Steel Manufacture	2

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[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98.

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

	[1] *Additional Percentage.*
Stevedores	Nil
Straits Plantations, Ltd.	4
Sugar (Cane), Manufacture of in British West Indies	1
Sugar Growing in Argentine	5
Sugar Growing in British India	5
Sugar Growing in Mauritius	5½
Sugar Growing in Natal	5½
Sugar Growing in Portuguese East Africa	5½
Sugar Growing in West Indies, etc.	5
Sulphide Mining in New South Wales	3½
Synthetic Dyestuffs, Production in United Kingdom	3
Tea Growing and Manufacture in British India and Ceylon	2
Tea Growing and Manufacture in the Netherlands, East Indies	2
Teak Growing in East Indies	4
Telephone Service in Chili	1½
Telephone Service in Columbia	1½
Theatres in the West End of London	9
Theatres elsewhere than in the West End of London	5
Tin Dredging in Malay and Siam	7
Tin Mining in Bolivia	7
Tin Mining in Malay	7
Tin Mining in Malay (Lode Tin)	10
Tin Mining in Nigeria	7
Tin Mining in United Kingdom	19

[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98.

27. Statutory percentage: increase by Referees for any class of trade or business.—(*contd.*)

	[1] *Additional Percentage.*
Tramways and Light Railways	1½
Tramways in New Zealand	1½
Tramways in Victoria	1½
Tungsten and Molybdenum, Manufacture of	6
Typewriters, Manufacture of in United Kingdom	3
Wattle Growing in Natal	3
Weldless and Welded Tubes	1
Wolfram Mining in Portugal	5
Wood Pulp Manufacture in Portugal	2
Wrought Iron Manufacture	1
Zinc Mining in Italy	2
Zinc Oxide, Manufacture in United Kingdom	6

28. Referee's procedure.

28. The Board of Referees have prescribed the procedure to be followed as regards applications to them.

The procedure laid down is—

(1) An application to the Commissioners of Inland Revenue;

(2) The forwarding of the application to the Referees, unless the Commissioners consider it "frivolous or vexatious or relating to matters already decided by the Referees";

(3) The order of the Referees is binding for all purposes of the Act (*i.e.*, any alteration in the percentage refers also to every calculation under the Act in which a percentage is involved);

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[1] The figures in this column should be added to the normal percentages referred to in Rules 26 and 98.

28. Referees' procedure.—(*contd.*)

(4) The order of the Referees shall bind every trade or business within the class concerned;

(5) A subdivision of a trade having any local or other special feature may be dealt with as a separate class. (See page 104.)

The form of application, etc., prescribed by the Referees is not reprinted here. It contains nothing calling for attention until an application is decided upon, when it may be obtained from the Referees at Spencer House, St. James's Place, S.W.1.

29. Percentage standard: Referees may grant basis other than capital employed.

29. The Board of Referees may, on application, order the calculation of the percentage standard to be by reference to some factor other than the capital. This rule applies only to a class of trade or business whose nature is such that the capital employed is small compared with the capital necessarily at stake.

(See enactment after the succeeding Rule.)

The general effect of the above Rule is to allow the percentage standard to be based on or on some amount other than the capital. For example, it might be found just to take it at 6, 7 or 8 per cent. on the turnover of the business, half the average debts or any other factor.

This rule has reference to a *class* of trade or business, and the observations on Rule 27 are in point. But the present rule is still further restricted in application. The capital actually employed (which is the normal basis for the calculation) must be small in comparison with the capital necessarily at stake. Thus, a particular class of traders might find their normal profits to be 20 per cent. of the capital they had actually to use, but only 3½ per cent. of the capital at stake. In such a case, a fair percentage standard might conceivably be based on one-half the capital at stake (if ascertainable), 7 per cent. on this amount giving the normal profit. This particular example will not arithmetically meet any case, but it illustrates the sort of factor which might be substituted for the capital employed.

29. Percentage standard: Referees may grant basis other than capital employed.—(*contd.*)

Under this Rule the Referees have made orders as follows—

Trades or Businesses to which the Orders apply—

(*a*) The business of insurance by underwriters as carried on by members of Lloyd's.

(*b*) The business of marine insurance carried on by companies or other bodies corporate incorporated under the laws of some part of His Majesty's dominions.

Basis of Percentage Standard.—For (*a*) and (*b*) the percentage standard shall be calculated upon the capital at stake, which capital shall be taken to be equivalent to the net premium income of the year at the end whereof capital is to be reckoned.

(*c*) Insurance, fire and/or accident and/or general (other than life or marine).

Basis of Percentage Standard.—Statutory percentage to be calculated on capital at stake, which capital shall be taken to be equivalent to one-half the net premium income of the year at the end whereof capital is to be reckoned.

30. Pre-war standard for munition works.

30. The Board of Referees may, on application, order an alteration of the standard of profits as regards a business wholly or mainly carried on for the purpose of the manufacture of war materials or for munition work.

See Chapters XVIII to XX as regards controlled firms.

The following is the text of the enactment governing this rule and the three rules preceding—

Where an application is made to the Commissioners of Inland Revenue—

(1) *For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is, owing to the nature of the trade or business, small compared with the capital necessarily at stake for that trade or business, by reference to some factor other than the capital of the trade or business or to some additional factor ; or*

(2) *For an alteration of the pre-war standard of profits as respects capital employed for the purposes of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes ;*

the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the

30. Pre-war standard for munition works.—(*contd.*)

case to a Board of Referees to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or alter the percentage standard for the class of trade or business the subject of the order, or alter the pre-war standard of profits, as the case requires.

On any such order being made, this Part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for all purposes of this Part of this Act as respects any trade or business belonging to that class.

This section shall apply to any subdivision of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that the subdivision can properly be dealt with separately. (*Finance* (*No.* 2) *Act*, 1915, s. 42.)

Any increase of the statutory percentage under this section shall be in addition to any increase of the statutory percentage which has, before the passing of this Act, been made under section forty-two of the principal Act. (*Finance Act*, 1917, s. 26 (3).)

Notwithstanding anything contained in section forty-two of the principal Act (*which provides for the reference to the Board of Referees of questions as to percentages, etc.*), *the Commissioners may, if they think fit, refer to the Board of Referees any application made under that section as respects*

30. Pre-war standard for munition works.—(*contd.*) *a class of trade or business, although the application may relate to matters already decided by that Board, and the Board may, if they think fit, on cause being shown by additional evidence or otherwise, reopen the case and make any order which they could have made on an application relating to matters not already decided by them, and may revise any order previously made by them affecting that class of trade or business ; and any such order or revised order shall, as from the date such as may be specified therein, apply and have effect in lieu of any previous order relating to the same matter.* (*Finance Act,* 1917, *s.* 25.)

Note on Rule 30. It should be noted that the alteration allowed is as respects capital employed for the purposes indicated in the Rule, and which could not be expected to be wholly remunerative except in time of war.

31. Substituted Standard. **31. For any accounting period ended after 31st December, 1919, a concern may, in lieu of a profits standard or a percentage standard, claim a "substituted standard,'' based on a minimum allowance of £500 for each working proprietor. To the amount obtained by taking £500 for each working partner, is added what would be the percentage standard of the concern, provided that the total substituted standard so arrived at does not exceed £750 for each working proprietor.**

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and nineteen, the following provisions shall have effect—

. . . .

(1) *For the pre-war standard of profit there shall, on the*

31. Substituted Standard.—(*contd.*)

application of the taxpayer, be substituted a standard (in this section referred to as " the substituted standard ") of an amount equal in the case of a trade or business which had no pre-war trade year to the statutory percentage on the average amount of capital employed in the first accounting period, and in the case of any other trade or business to the percentage standard with the addition in either case of a sum of five hundred pounds in respect of each working proprietor in the trade or business :

Provided that—

(*a*) *the amount of the substituted standard shall not, as respects any trade or business, exceed the sum of seven hundred and fifty pounds in respect of each working proprietor in the trade or business ; and*

(*b*) *in computing the profits of a trade or business in any accounting period as respects which the substituted standard is in force, no deduction shall be allowed in respect of the remuneration of any working proprietor ; and*

(*c*) *where the accounting period is less than a year the substituted standard shall be proportionately reduced ; and*

(*d*) *where a substituted standard has been adopted in the case of any trade or business for any accounting period the provisions of paragraph* (4) *of section twenty-six of the Finance Act,* 1917, *as amended by this Part of this Act, shall not have effect as regards that trade or business in respect of that accounting period.*

(*e*) *Nothing in this paragraph shall affect the operation of any agreements made between the Food Controller and the owners of controlled flour mills which provide for determining the amount of any payment to be made or received under such agreements by reference to the*

31. Substituted Standard.—(*contd.*)

pre-war standard of profits, and any such agreements shall have effect as if this Act had not passed.

In this paragraph—

The expression "trade or business" means any trade or business carried on either by an individual or by persons in partnership or by a private company within the meaning of the Companies (Consolidation) Act, 1908 ;

The expression "proprietor" means, as the case may be, the individual carrying on the business, any partner in the partnership, or any director of the company owning not less than twenty per cent. of the share capital or stock of the company ;

The expression "working proprietor" means a proprietor who has, during not less than one half the accounting period, worked full time in the actual management or conduct of the trade or business, but no person shall be deemed to be a working proprietor in the same accounting period in respect of more than one trade or business ;

Where any person who served during the war as a member of any of the naval or military forces of the Crown or of the Air Force or in service of a naval or military character in connection with the war, for which payment was made out of moneys provided by Parliament, or in any work abroad of the British Red Cross Society or the Order of St. John of Jerusalem or any other body with similar objects, and was before entering on such service working full time in the actual management or conduct of a trade or business, has died and the trade or business is being carried on for the benefit of his widow, the same standard shall be allowed for the trade or business as would have been allowed under the foregoing provisions of this

31. Substituted Standard.—(contd.)

section if the deceased person had been a working proprietor during the accounting period. (*Finance Act*, 1920, s. 45 (1).)

This concession applies to any accounting period ending after 31st December, 1919. It deals with the " working proprietors " of a business, providing that no person shall be regarded as a working proprietor of more than one business.

A working proprietor must have worked full time in the actual management or conduct of the business for at least half the accounting period in question. He may be either the sole proprietor of a business, or partner in the case of a firm, or a director owning at least 20% of the share capital in the case of a company.

The effect of the concession is to allow a " Substituted Standard " made up of £500 per working proprietor *plus* the percentage standard of the concern. (In the case of a concern which had no pre-war year, read " the statutory percentage on the capital of the Accounting Period," instead of " the percentage standard.")

In other words, the concern calculates its percentage standard and adds to it £500 for each working proprietor.

There is a proviso that the Substituted Standard so arrived at shall not exceed £750 per working proprietor.

(This concession is alternative to the concession in Rule 2 (a) and (b). Both may not be claimed concurrently.)

81. Substituted Standard.—(*contd.*)

It may be noted that the concession to a working proprietor is extended to the widow of a deceased man who would have been within the term had he lived and retained the position in the business which he held before joining the forces—provided that the business is carried on for the widow's benefit.

CHAPTER V

New Businesses and New Proprietors

NEW BUSINESSES—NEW AGENCIES OR BUSINESSES WITH SMALL CAPITAL—CHANGE IN OWNERSHIP —CHANGE IN PARTNERSHIP.

As regards the date on which the business of a colliery company may be regarded as having commenced, see the following cases.

In **Cannop Coal Co. v. Commissioners of Inland Revenue** (*King's Bench Division,* 1918), the Company was formed in 1906 for the purpose of mining coal in the Forest of Dean. The sinking of pits was commenced in the same year. In 1908 a drift was made in a hillside 400 yards distant from the pits for the purpose of obtaining coal for the pit-sinking machinery. From 1909 a profit was made from a substantial surplus of drift coal obtained above that required by the undertaking. In 1911 the sinking of the pits was completed. Output of coal from the pits really commenced in July, 1912. Prior to April, 1912, the small proceeds from the sale of coal from the pits was credited to capital.

The Company contended that its business was not commenced until the 1st July, 1912, or, alternatively, the 1st April, 1912; therefore that there were only two pre-war years.

The Special Commissioners on appeal decided against the Company, and their decision was confirmed by the Court.

Sankey, J.: "I think it is necessary to look at the facts because it really is not a question of fact for the Commissioners. . . . (Counsel) says the Commissioners have gone wrong here because they have compared the business after the war with something which was entirely different. There was an entirely different business before the war, and therefore he says you cannot compare the one with the other. I must say that it appears to me that it is entirely a question of fact for the Commissioners. I am not at all saying what would be the result if one was asked to compare a going business after the war—with coal being 'won' for the first time after the war—with the business which before the war had only consisted in the sinking of pits and not getting any coal out of them. Those are not facts at all in this case. . . . The contention of the Appellant Company was that the trade or business for which the Company was formed was to obtain coal by means of the pits and not by means of the drift. I very much doubt whether that was so. I do not think it a bit matters, because the Company was in fact obtaining coal both before and after the war."

Birmingham and District Cattle By-products Co., Ltd., v. The Commissioners of the Inland Revenue (*King's Bench Division,* 1919). The company was incorporated on the 20th June, 1913. Between that date and the 6th October, 1913, the Directors arranged for the erection of works, the purchase of plant, and machinery, and entered into agreements relating to the purchase of products to be used in the business and to the sale of finished products. On the 6th October, 1913, the installation of plant and machinery was completed, and the company commenced to receive raw materials for the purpose of manufacture into finished products. The question was, when did trading commence? The General Commissioners held on appeal that trading commenced on the 6th October, 1913, and that therefore there had not been one complete pre-war trade year. This decision was confirmed in the King's Bench Division.

Rowlatt, J.: (Regarding the activity of the directors prior to October, 1913), "Now the company took over those agreements (with butchers for the supply of by-products), and having taken over those agreements the directors at the expense of the company, as was very proper, went about and looked at places of business of a similar character in various parts of the country. That was an admirable thing to do preparatory to commencing business, but it certainly was not commencing business. If you go and look at other businesses to see how you will conduct your business when you set it up, you are preparing to commence business, but you are not commencing business. Then they entered into a contract for the erection of works. That again is preparatory."

As regards the continuation of a ship-owning business after requisition by Admiralty, see **Sutherland v. Inland Revenue, 1918**, page 53.

32. Standard where only two pre-war years existed.

32. Where there have been two pre-war trade years but not three, the pre-war standard of profit is either the average profit of the two years or the profit of the last of them, at the option of the taxpayer.

Where, owing to the recent commencement of a trade or business, there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the taxpayer, the profits arising from the trade or business during the last of those two years. (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part II*, 4.)

This enactment does not take away the taxpayer's option of selecting a percentage standard (Rule 25). (See Chapter IV regarding the standard of profits and Rule 18 as to pre-war trade years.)

Example.—Business set up 1st January, 1912: Profits—1912, £2,000; 1913, £12,000; 1914, £35,000. The profits standard selected is obviously £12,000. Had the capital been more than £200,000, the percentage standard (at 6 per cent. in the case of a company) would have exceeded £12,000, and might have been selected.

33. Standard where only one pre-war year existed.

33. Where there has been one pre-war trade year but not two, the pre-war standard of profit may be based on the one year's trading.

. . . *where there have not been two pre-war trade years,* *but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 4.)

33. Standard where only one pre-war year existed.—(*contd.*)

This enactment does not take away the taxpayer's option of selecting a percentage standard. (See the example under the previous rule.)

34. Standard where no pre-war trade year existed.

34. Where there has not been one pre-war trade year' the percentage standard must be adopted. It must be based on the average capital employed in the business during the first accounting period.

As regards any accounting period ended after 31st December, 1916, three per cent. is added to the statutory percentage.

As regards any accounting period ended after 31st December, 1919, five per cent. is added to the statutory percentage.

. . . and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 4.)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and sixteen, the following provisions shall have effect—

. . . .

In ascertaining . . . . the pre-war standard of profits in cases where there has not been one pre-war trade year, three per cent. shall be added to the statutory percentage

34. Standard where no pre-war trade year existed.—(*contd.*)

per annum; and accordingly in . . . Rule 4 *of Part II of the Fourth Schedule to the principal Act, the expression "statutory percentage" shall be taken to mean the statutory percentage as so increased.* (*Finance Act,* 1917, s. 26 (1).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and nineteen, the following provisions shall have effect—

. . . .

In paragraph (4) *of Part II of the Fourth Schedule to the principal Act the words "during the first accounting period" shall be substituted for the words "during the accounting period."* (*Finance Act,* 1920, s. 45 (3).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and nineteen, section twenty-six of the Finance Act, 1917, *shall have effect as though in paragraph* (1) *"five per cent." were substituted for "three per cent."* (*Finance Act,* 1920, s. 47.)

(See Rule 25 regarding the percentage standard and Rule 18 as to what constitutes a pre-war trade year.)

35. Agency, etc., succeeding previous occupation, etc.

35. In the case of an agency or a business involving capital of a comparatively small amount, which has not had three pre-war trade years, the three preceding rules are set aside for the following: The standard of profits shall be computed according to the profits of any previous business or occupation (of whatever nature) carried on by the person concerned; if that business has been

continued the standard shall be computed according to the amount by which its profits have diminished.

35. Agency, etc., succeeding previous occupation, etc.—(*contd.*)

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment, or profession of any sort, whether liable to Excess Profits Duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade, business, office, employment, or profession has been diminished. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 4.)

The intention of this enactment may be shown by way of example.

A man has been engaged in business (or has been employed) with the following results :

	£
Year ended 31st December, 1911— Profits or earnings	400
Year ended 31st December, 1912— Profits or earnings	420
Year ended 31st December, 1913— Profits or earnings	450
Six months to 30th June, 1914— Profits or earnings	210

On 1st July, 1914, he set up a new business into which he put £200 capital. In the year to

35. Agency, etc., succeeding previous occupation, etc. —(*contd.*)

30th June, 1915, his profits were £750. But for this Rule, his pre-war standard would be—

$$7\% \text{ on } £200 = £14,$$

or 7% on the average capital in the year ended 30th June, 1915.

The duty payable (at 50%) would be—

$$\frac{£750 - 14 - 200}{2} = £268$$

The percentage standard is very low, hence a heavy liability. But under this rule, the profits standard may be based on the profits of the previous occupation (even if that occupation is exempted from the duty).

$$\text{Profits standard } \frac{£450 + 420}{2} = £435$$

Profit of accounting period = 750

Excess . . . = 315
Allowance . . = 200

2)115

Duty (at 50%) . = £57

Suppose, however, the previous occupation had been maintained, but the profit had diminished from the date the new business or agency was set up—

35. Agency, etc., succeeding previous occupation, etc. —(*contd.*)

Year ended 30th June, 1915—	
Old business: Profit	£120
Year ended 30th June, 1915—	
New business: Profit	750

In this case, the new business may be taken to have replaced a certain portion of the old business. That portion can be measured by reference to what profits have gone since the establishment of the new business. The calculation is not stereotyped, but some such system as the following must be followed.

Standard of profit of the old business—

$$\frac{£420 + 450}{2} = £435$$

Actual profit, year to 30th June, 1915 =	120
Diminution =	£315

The diminution becomes the standard of profit for the new business.

New business: Profits of accounting period =	£750
Standard =	315
Excess =	435
Allowance =	200
	2)235
Duty (at 50%) =	£117

See the decision in **Mills from Emelie, Ltd. v. Commissioners of Inland Revenue,** (page 133).

36. Change of ownership: taxpayer's option.

36. Where a business has changed ownership since the commencement of the three last pre-war trade years, the change must be regarded as the setting up of a new business unless the taxpayer makes application otherwise. In the latter case the rules must be modified if it is necessary in order to make the basis of the profits standard the same as the basis of the computation of the profits of the accounting period.

Where, since the commencement of the three last pre-war trade years, a trade or business has changed ownership, the provisions of this part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in cases when the taxpayer makes an application that the provisions of Part III[1] *of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part II,* 5.)

It will be seen that the taxpayer has an option in this case. The "rules" referred to are those of the Schedule of the Act. They are summarized on pages 227 to 229. An example of the necessary modification may be given as follows: The trade was carried on by A B until 1st January, 1914, when C D acquired the business. It suits him for the change to be ignored, so his predecessor's profits provide the basis for the standard of profits. The question raised by this enactment is whether, under the ordinary rules, the method of comparison is fair. Is there any marked difference between his general circumstances and his predecessor's? Thus, his predecessor may have owned the trade premises, which, we will assume, C D does not own. Rule 43 must apparently be modified here, as it would be unfair to include the annual value of the premises in the standard of profit while they are excluded from the profits of the accounting period.

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[1] *i.e.,* the Part relating to Excess Profits Duty.

36. Change of ownership: taxpayer's option.—(*contd.*)

37. Where there has been a change in the constitution of a partnership, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees.

37. Modification required by change in partnership.

(See enactment and notes after Rule 67.)

Rule 36 covers the ground covered by Rule 37, but does not give the right of appeal to the Referees.

Rule 37 might be invoked, for example, where a creditor formerly entitled to interest becomes a partner, the loan becoming his capital. If the rate of interest was higher than the statutory percentage rate (at which the allowance for increased capital is computed), the concern would make application for modification of Rule 21. Such circumstances are, of course, unusual.

38. Change in ownership during accounting period.

38. Where there has been a change of ownership during the accounting period the Commissioners of Inland Revenue have the option of splitting this period into two parts according to the respective ownerships, or of regarding the period as one period of business conducted by the last owner.

Where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date. (*Finance* (*No.* 2) *Act,* 1915, *s.* 45 (2).) (*See also the remaining part of this subsection set out under Rule* 112.)

Where the period is split, a proportionate part of the allowance of £200 per annum (Rule 3) is allowed from each part-period. Where the period is not split, the same aggregate allowance will be made. Thus—

Pre-war standard of profit . .	£600
Profit in year to 31st March, 1915 .	1,000

The business changed hands at 1st January, 1915. The Board may take the figures as they stand. The excess is £400, which, less the allowance of £200, leaves £200, the duty being £100. Should the Board elect to split the period, the enactment does not provide for the £1,000 to be divided in proportions of 3 to 1 in accordance with the periods of ownership. The intent is rather to ascertain the profit

38. Change in ownership during accounting period.—(*contd.*)

for the period ended 31st December, 1914. If it is £850, the computation will be—

Profit in accounting period of 9 months .	£850
Standard £600 : $\frac{9}{12}$ × £600 . . .	450
Excess . . .	400
Allowance £200 : $\frac{9}{12}$ × £200 . .	150
	2)250
Duty (at 50%)	£125

The second period would then be reviewed as follows—

Profit in accounting period of 3 months .	£150
Standard £600 : $\frac{3}{12}$ × £600 . .	150

No excess.

It will be observed that in this case the aggregate duty is £125, against the £100 found to be payable if the period were not split.

Mills from Emelie, Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division*), 1919. A trader retired from business in April, 1914, having sold the lease of the business premises which were subsequently pulled down. A certain number of her late employees, to whom she had handed several order books, etc., containing the names and addresses of customers, formed a company, and at once commenced to trade in neighbouring premises. The

38. Change in ownership during accounting period.—(contd.)

company did not take over any assets, stock, book debts, contracts or liabilities, of the late business, and no agreement or payment was made relative to the goodwill of that business. The company claimed that it had succeeded to the business formerly carried on. The Special Commissioners decided against the company, and their decision was affirmed in the High Court.

Rowlatt, J.: " What happened was simply this. The lady who was in fact carrying on the business known as Emelie, Ltd., left the business because the premises were pulled down; she discontinued carrying on her business. But willing to do a kindness to those who had served her in the business, she gives the saleswomen, respectively, the list of the customers whom those saleswomen had been in the habit of attending, not purporting, whether she could do it or not, to sell to each saleswoman some unascertained part of the aggregate part of the business, but simply that they might do their best to make new businesses. Many of those saleswomen clubbed together, not all of them, but many of them, and formed the company which is the present appellant. Others stood out, and for all I know went somewhere else and founded other businesses. I think it a perfectly plain case of a business not having changed ownership, because it has been dissolved and the customers have been divided among new people."

His Lordship declined to take the view that part of the business changed ownership, and that a

38. Change in ownership during accounting period.—(contd.)

division should be made as in the case of *Mr. Maxse* (page 73).

He also declined to regard the company as having carried on a previous trade (*i.e.*, the businesses of the saleswomen) within the meaning of paragraph 4, of Part II of Fourth Schedule (Rule 35).

CHAPTER VI

The Computation of Profits : General Rules

SPECIAL COMPUTATION FOR THE PURPOSE—INCOME TAX REGULATIONS TO BE OBSERVED IN THE ABSENCE OF DIRECTION OTHERWISE—SUMMARY OF RULES — SUBSCRIPTIONS—NO AVERAGE—ACTUAL PROFITS ARISING IN THE PERIOD—INTEREST, ETC., EXCLUDED—TRADE PREMISES OWNED INCLUDED—INCOME FROM INVESTMENTS EXCLUDED—DEVELOPMENT AND OTHER EXPENSES TO BE ALLOCATED TO PROPER PERIODS—ARTIFICIAL TRANSACTIONS—SUBSTITUTION OF OTHER ASSETS.

39. Separate computation on Income Tax rules where not directed otherwise.

39. In ascertaining what profit has been made, for the purposes of Excess Profits Duty, a separate computation is to be made, irrespective of any computation required for any other purpose. In the absence of express direction on any matter the rules of the Income Tax Acts are to be observed.

The profits arising from any trade or business to which this Part[1] *of this Act applies shall be separately determined for the purpose of this Part*[1] *of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of Income Tax, subject to the modifications set out in the First part of the Fourth Schedule to this Act and to any other provisions of this Act.* (*Finance* (*No.* 2) *Act*, 1915, *s.* 40 (1).)

The profit estimated for purposes of Excess

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[1] *i.e.*, the Part relating to Excess Profits Duty.

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

Profits Duty will, in many cases, be the same as that taken for Income Tax purposes.

The following summary of Income Tax rules governing the computation of profit is taken from the Author's *Income Tax Practice*—

ADD *to the profit shown by the trader's account such of the following items as appear therein*—

(*a*) The cost of additions, extensions and improvements to premises, fixtures or plant (including such items as an additional cart, a new shop front, an additional typewriter, etc.), so far as they have been charged against profits.

(*b*) The amount of any sums written off as depreciation, as additions to reserves, or to a suspense account. (A distinct claim may be made in respect of depreciation of plant and machinery.)

(*c*) Any expenses incurred in setting up the business which have been charged against the profits (*e.g.*, a company's preliminary expenses, goodwill written off, the entrance fee to the Stock Exchange, etc.).

(*d*) Any expense incurred in obtaining or re-arranging capital, so far as it has been charged against profits (*e.g.*, a lawyer's charge for obtaining a loan, *interest*[1] *on a loan* other than certain bank interest, the cost of issuing shares or debentures, etc.).

(*e*) Expenses charged against profits in respect of other capital matters (*e.g.*, the cost of a deed of partnership, the premium or other payment for a lease, etc.).

(*f*) Drawings by or allowances to the trader himself or to his wife, whether under the name of interest on capital, drawings, salary or wages; also *payments*[2] *to retired* or sleeping *partners*.

(*g*) Expenses viewed by the Acts as being personal to the trader (*e.g.*, subscriptions,[3] charitable donations,[3] income tax, the cost of the trader's maintenance or that of his family or domestic servants, life assurance premiums[4]).

[1] Interest, ground rent, annuities, etc., need not be added back for Excess Profits Duty purposes—*see* Rule 42.

[2] Payments to former partners need not be added back for Excess Profits Duty purposes.

[3] *See* Rule 40 as regards a partial allowance.

[4] No allowance whatever is made for Excess Profits Duty purposes in respect of life assurance premiums.

30. Separate computation on Income Tax rules where not directed otherwise.—*(contd.)*

(*h*) Any charge exceeding that allowed by the Acts in respect of business premises[1] or rent, rates, lighting, where the trader resides on the premises in which the business is carried on.

(*i*) Expenses not wholly and exclusively laid out for the purposes of trade.

Johnson Bros. Co. v. Commissioners of Inland Revenue (1919). Under a pre-war arrangement the owner of a business remunerated his three sons by paying them £150 per annum *plus* 25% of the net profits of the business. On making assessment the Commissioners of Inland Revenue disallowed the difference between the total pre-war remuneration and the remuneration in the accounting period. The owner of the business appealed to the Special Commissioners, who decided to allow a deduction of £250 only, considering that this represented the full amount actually expended for the purposes of the business. The Court decided that the Special Commissioners had jurisdiction to increase an assessment on appeal, and that they were entitled to decide what payments to the sons of the owner were actually paid as remuneration in consideration of the time and labour expended by them.

(*j*) *Annual interest,*[2] *ground rent, annuities, etc., from all of which the trader should deduct tax, at the highest rate.*

(*k*) The value of any goods supplied without payment to the trader's family or to another trader in return for goods not used in the business.

(*l*) Any bad debts written off in previous years but now recovered and added to the bad debts reserve.

DEDUCT *from the profit shown by the trader's account such of the following items as appear therein.*

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[1] *See* note on page 144.

[2] *See* note 1 on page 137.

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

(*m*) A due charge for the annual value of the business premises[1] if they are owned by the trader and if no rent has been charged in the accounts.

(*n*) Any receipts from sub-tenants, provided that no charge has been made in the accounts in respect of the premises sublet; similarly, rents received from any property owned by the trader.[2] It will be understood that these deductions will be made only if the rents in question are included in the accounts as receipts.

(*o*) Sums charged against reserve or suspense accounts which the trader was entitled to charge against the year's profit (*e.g.*, an ascertained bad debt or other trading loss).

(*p*) The actual amount of dividends[3] (taxed before receipt) included in the profits; also any other taxed income included in the profits.

As shown, there are certain distinctions between Income Tax and Excess Profits Duty rules operating in various circumstances. These distinctions are the subjects of certain of the later rules, which it may be useful to summarize here.

39. The actual profits arising in each period are reviewed.

40. Interest, annuities, etc., may be deducted from profits.

41. Trade premises and lands are not excluded.

42. The proceeds of investments are excluded.

43. Capital expenditure may not be charged. Development expenditure, etc., apportioned.

44. Artificial transactions are prohibited.

45. Where assets are changed.

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[1] *See* note on page 144.

[2] Not always excluded for Excess Profits Duty purposes —*see* Rule 43.

[3] Not always excluded for Excess Profits Duty purposes —*see* Rule 44.

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

46–48. The abnormal remuneration of directors, etc., is restricted.

49–51. Income Tax is not an allowable expense; the effect of payments of Excess Profits Duty.

52. Foreign and Colonial taxation deductible.

53. Colonial Excess Profits Duty—special arrangement.

54. The profits on long contracts may be properly allocated.

55–57. Suspended contracts, enemy debts, etc.

58–63. Depreciation and renewal charges are restricted to fair average amounts.

64. War plant. Special rules.

65. Special circumstances requiring the modification of rules. (Patents.)

The general intent of these rules is—

(*a*) To allocate items to the appropriate period;

(*b*) To ensure the consideration of real profits;

(*c*) To secure a fair basis for comparing the profits of different periods;

(*d*) To provide for special circumstances in which the ordinary rules could not fairly apply.

Commissioners of Inland Revenue v. E. C. Warnes & Co., Ltd. (*King's Bench Division*, 1919). The company carried on the business of exporting oil to Norway, among other places, and in connection with the export of a certain cargo, it was alleged that they incurred a liability to penalties under an enactment in force during the period of the war.

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

By consent, judgment was taken for a mitigated penalty of £2,000, and the company had to pay their own costs. It was held that neither the penalty nor the costs could be regarded as an expense of such a nature that it might be deducted in computing profits for Excess Profits Duty purposes.

Rowlatt, J.: "The section (under which penalty was paid) is one of very great and startling stringency; but, of course, the liability can only be regarded as a liability of a penal character. Now undoubtedly this detriment, if I may use the vaguest word, is 'a loss' in the sense that they had to pay £2,000, and have not got the £2,000 which they otherwise would have had. It is also 'connected with or arising out of such trade,' because they committed the offence, or what must be regarded as the offence, in carrying out their trade. But the question really is whether, within the meaning of this clause, it is a loss connected with or arising out of their trade. It seems to me that a penal liability of this kind cannot be regarded as a loss connected with or arising out of a trade. I think that a loss connected with or arising out of a trade must at any rate amount to this—I do not say that what I am going to say is exhaustive, it is not intended to be, but still it must amount to something in the nature of a loss which is contemplatable, and in the nature of a commercial loss. I do not think it is possible to say that when a fine, which is what it comes to, has been inflicted upon a trading body, it can be said that there is

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

'a loss connected with or arising out of' the trade within the meaning of this section."

Commissioners of Inland Revenue v. Alexander von Glehn & Co. (*Court of Appeal,* 1919.) A firm had incurred a penalty and costs amounting to £3,000 by an infringement of the Customs (War Powers) Act, 1915. The company claimed to deduct this amount for the purpose of Excess Profits Duty. It was held, however, following the case of *Commissioners of Inland Revenue* v. *Warnes* (see page 140) that the deduction should be disallowed. In making this decision the Court relied on the case of *Strong & Co.* v. *Woodifield,* where damages awarded to a guest at an inn who had sustained injuries from the collapse of a chimney, were disallowed as a deduction from the profits of the proprietors of the inn.

It was ruled that the deductions allowed by the Income Tax Acts " must be in the nature of commercial losses or expenses *lawfully* incurred in connection with those *lawful* businesses."

Weller v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). Certain brewers owned freehold tied houses which were let to tenants at rents less than the annual value on which tax was paid under Schedule A. For Income Tax purposes they were entitled to set against their profits as brewers the difference between the rents received and the annual value referred to. It was held that for Excess Profits Duty purposes the same allowance should be made.

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

Irish Catholic Church Property Insurance Company v. Commissioners of Inland Revenue (1918). It was held that, in computing for Excess Profits Duty purposes the profits of a company carrying on fire and employers' liability insurance business, no deduction may be made in respect of the depreciation of securities.

(For other decisions in this case see under Rules 88 and 92.)

Reference to a few other specific items may be desirable.

Advertising.

See Rule **45** as regards the general principles governing this matter. A somewhat larger general advertising expenditure has been permitted to be charged in the Accounting Period than was incurred in the pre-war years, the ground of allowance being the increased cost of publicity. In special circumstances a considerable increase has been passed.

There has been much criticism of the alleged large expenditure on advertising during the war. Thus Mr. Wiles, in the course of the Budget Debate on 23rd April, 1918, asked the Chancellor of the Exchequer to consider the large amount of money which is being spent in advertising by people who pay Excess Profits. He understood that " a firm which advertised was allowed to spend the same amount in advertising in proportion to their turnover that they spent before the war. That might

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

have been all right at the beginning of the war, but in view of the present shortage of paper and labour he thought that the matter should be reconsidered." This is referred to here, more particularly because of Mr. Bonar Law's reply that it was "a matter which could be dealt with by regulation." The matter has not been so dealt with.

Business Premises.

The normal allowance is the rent. Where the trader resides on the premises, he may charge a proportion thereof, but not exceeding two-thirds. Where he owns the premises, or holds a lease, there should usually be substituted for rent, five-sixths of the gross rental value (Schedule A) plus expenditure on repairs. There is no "two-thirds" restriction as regards residence so far as the cost of repairs is concerned. (Under the Finance Act, 1918, an increased deduction is allowed for income tax purposes in the case of mills, etc., owned by the trader. See page 214 as to this.)

Charitable Subscriptions.

(See Rule 40.)

Exchange, Losses on.

It is not possible to deal here with all cases of difficulty arising out of problems of exchange. The general principle to be applied is that balances of money, goods, and other *circulating* assets should be valued at the rates of exchange in operation at the date to which the account is made up (*i.e.*, at the end of the Accounting Period).

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

(See *Hansard*, 29th June, 1917.)

See Rule 57 as regards matters in suspense through the late war.

Altered Basis of Computation.

Difficulty often arises where the basis of Income Tax computation for the Accounting Period is not the same, in all respects, as the basis adopted in the pre-war years. Thus—

(1) *An error in the former Income Tax basis may have been discovered.* In this connection it must be remembered that the Excess Profits Duty is distinct from Income Tax. Any error in the amount of Income Tax paid must be dealt with separately. As regards Excess Profits Duty, the pre-war computations must be corrected for all future purposes. If past computations prove to be incorrect as against the Revenue, additional assessments may usually be made. (Rule 112.) If they are incorrect as against the taxpayer, the Inspector will usually make adjustments, but the law does not compel him to do so if the period limited for appeals has expired. (Rule 116.)

(2) *A principle of Income Tax law may be regarded differently at the time of the Accounting Period.* For example, the assessment of Brewers, in regard to their tied houses, is conducted on principles entirely different from those adopted before 1914. The same considerations apply as under (1).

(3) *The law may be altered during the Accounting Period.* For example, under the Finance Act, 1918,

39. Separate computation on Income Tax rules where not directed otherwise.—(*contd.*)

traders who own and occupy mills, factories, and similar premises, are entitled to deduct the full (and not five-sixths of the) rental value under Schedule A. In cases such as these, Rule 21 must be observed. The amended principle will be adopted in the computation of the profits of the Accounting Period, and therefore in the computation of the standard for comparison therewith.

Valuation of Stocks. See Chapter XI.

40. Charitable Subscriptions.

40. A partial allowance is made in respect of certain charitable, etc., subscriptions paid after 16th July, 1920. Except for this partial allowance, charitable subscriptions are deductible only where made for the benefit of the business (*e.g.*, contributions to hospitals by which employees may benefit), in which case they are allowable in full.

Where, out of the profits of a trade or business, any contribution has been made after the sixteenth day of July, nineteen hundred and twenty, to any trust, society, or body of persons in the United Kingdom established solely for the purpose of the relief of the poor or the sick, or for the advancement of religion, education, or for scientific research, there shall, for the purposes of Excess Profits Duty, be allowed, in the computation of the profits of the trade or business arising in the accounting period within which such contribution was made, a deduction in respect of such contribution of an amount not exceeding five per cent. of those profits as calculated for the purposes of Excess Profits Duty (before adjustment for increased or decreased capital and before making any deduction under this section), and not exceeding twenty per cent. of the amount of such contribution.

This section shall not apply to any contribution which, apart from the provisions of this section, would be admissible as a deduction from profits for the purposes of Excess Profits Duty. (*Finance Act,* 1920, s. 48.)

40. Charitable Subscriptions. —(*contd*)

This partial allowance does not restrict the allowance of the deduction of the full subscription, where the subscription is of such a character that its deduction in full is permitted under previous rules.

The new allowance deals with contributions made after 16th July, 1920, which—

(i) are made to any trust, society, or body of persons in the United Kingdom;

provided that

(ii) such trust, etc., is established solely for the purpose of:

(*a*) the relief of the poor or the sick; or for
(*b*) the advancement of education; or for
(*c*) scientific research.

One-fifth of such contribution may be deducted from profits for Excess Profits Duty purposes, provided that the deduction shall in no case exceed 5 % of such profits (as computed for Excess Profits Duty purposes before the adjustments for increased or decreased capital).

41. The profits of the accounting period, with regard to which Excess Profits Duty is chargeable, are the actual profits arising in that period, and not the average profits of any other periods, nor even necessarily the "book-keeping" profit of the period concerned.

41. Actual profits of period regarded.

The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing

41. Actual profits of period regarded.—(contd.)

profits by reference to any other year or an average of years shall not be followed. (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part I*, 1.)

This provision has regard, of course, to the well-known average system in operation for Income Tax purposes, but which would not be in place for Excess Profits Duty purposes. The only average taken in this connection is that explained in Rule 20, by which the normal pre-war profits are standardized by averaging the profits of certain pre-war trade years.

A note is necessary as to the words " arising in." It was realized that there is often a difference between the profits which " arise " in a period and the profits which the system of book-keeping in vogue causes to be revealed in the accounts. This has especially to do with Suspense Accounts, Reserves, and Bad Debts. Strictly speaking, the precise adjustment should be made each year for Income Tax purposes; but in that connection a trader is sometimes allowed a good deal of latitude, inasmuch as what falls out of one year falls into another. But for purposes of the tax under consideration, it is essential that all matters should be exactly allocated. To exclude an item appertaining to a pre-war year from that year's receipts or payments, and to include it in the accounts of a during-war period, might be and often must be a serious error.

The exact apportionment of any matter must, of course, depend on the particular facts of the case. The only way to ensure accuracy is to scan the items in the Trading and Profit and Loss Accounts and Balance Sheet, making mental interrogations as to possible inexact appropriations. (In this connection, see Chapter IX regarding matters in suspense and contracts extending over more than one year, and Chapter X regarding charges for depreciation and renewals. See also specimen accounts in Chapter XVII.)

41. Actual profits of period regarded.—(*contd.*)

42. The amount to be taken as profit for purposes of Excess Profits Duty is not to include sums payable to other persons in the way of interest, rent, royalties, etc. The proprietor's profit only is to be regarded.

42. **Proprietor's profit regarded, excluding interest, etc.**

The principle of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments Income Tax on which is collected at the source (not being payments of dividends or payments for the distribution of profits) shall not be followed. (Finance (No. 2) *Act,* 1915, *Fourth Schedule, Part I,* 2.)

This rule is necessary to prevent the application of the Income Tax Regulation under which the assessment on a concern includes the part of the (so-called) profits which will be paid away. The Income Tax Acts make this perfectly fair by authorizing the concern to deduct from the recipients of such payments an appropriate portion of its tax. This is not possible in the case of Excess Profits Duty, and the assessment must, therefore, be restricted to the real net profits. The following comparative statement will illustrate the matter.

42. Proprietor's profit regarded, excluding interest, etc. —(*contd.*)

A Company's Profit.

	(i) *For its own purposes.* £	(ii) *For Income Tax purposes.* £	(iii) *For Excess Profits Duty purposes.* £
Per account .	10,048	10,048	10,048
Income Tax charged . .		743	743
Added to Reserve		2,000	2,000
Interest on loan paid .		400	
Patent Royalties paid . . .		150	
	£10,048	£13,341	£12,791

It will be seen that the rules prescribed by the Income Tax Acts are followed save where there is express direction to the contrary.

Payments of dividends may not serve to reduce the profits for Excess Profits Duty purposes, neither may any other distributions of profits.

Debenture Interest is not mentioned in the Act, but should undoubtedly be allowed as a deduction, as it is not a distribution of proprietors' profit. (See *Bolands, Ltd.*, v. *Inland Revenue* under Rule 93.)

It is sometimes asked whether Debenture Interest must be deducted in the Standard Period computation, in a case in which there is no similar charge in

42. Proprietor's profit regarded, excluding interest, etc.—(contd.)

the Accounting Period, because the Debentures have been redeemed. The answer is in the affirmative. The business loses tax by reason of the increased profits, but gains (probably) still more by reason of the allowance in respect of increased capital. (Rule 98.)

Similarly, when Debentures are issued during the Accounting Period, there is a diminution of tax by reason of the reduction of profits, but an increase of tax by reason of the adjustment in respect of decreased capital. (Rule 99.)

Of course, there are usually other elements in such transactions—*see* the Notes on page 356.

43. Inclusion of property owned and used in the business.

43. Any profits arising from lands or buildings owned by the concern and used in the business are to be taken into account.

The principle of the Income Tax Acts under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed. (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part I*, 2.)

This, again, is a distinction from the Income Tax Acts. These profits are not included in the Schedule D assessment, because they have been taxed under Schedules A and B. There are no such schedules in the Excess Profits Duty scheme, and no differentiation can be made. The profit arising from lands and buildings occupied is, in fact, the amount saved by reason of other lands and buildings not having to be rented. The rule, therefore, is

43. Inclusion of property owned and used in the business.—(*contd.*)

that no deduction from profits may be made on account of such matters. Ground Rents and Mortgage Interests are deducted under Rule 42. That rule and this both serve to approximate the profit for Excess Profits Duty purposes to the profit as estimated for the purposes of the concern.

The clause "and used in the business" is important. The words of the Act will have been seen to be "forming part of the assets of the trade or business," which is not, on the face of it, the same thing. But Rule 44 requires the income from investments to be excluded from the computation; and Rule 91 requires the exclusion of all capital, the income from which is ignored, from any computation of the assets of the concern. It follows that the offices of a company, for example, should be included in the Rule, because they form part of the assets of the business, as also do Colliery cottages and a Brewer's tied houses. But if a company had invested its surplus funds in house property, that property would not form part of the assets of the business for Excess Profits Duty purposes, and should not, therefore, be included in the operation of Rule 43.

44. Exclusion of income from investments.

44. Income from investments may not form part of the profits for Excess Profits Duty purposes. *Rule* 88 *indicates exceptions in the cases of life assurance businesses and investment companies.*

In estimating the profits no account shall be taken of income received from investments. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 8.)

44. Exclusion of income from investments.—(contd.)

It will be remembered that such income is ignored in estimating pre-war profits as well as the profits of the accounting period. All that the Act really does, therefore, is to order that *variations* in the income from investments shall be ignored, except where a Percentage Standard is granted, in which case it prevents the taxpayer reducing the taxable excess by the difference between the statutory percentage (or the statutory percentage plus 3% or 5%—*Rule* 98) and the actual percentage yield on the investment.

Bolands, Ltd., v. The Commissioners of the Inland Revenue (*Irish Court of Appeal*), 1918. In this case the company owned Consols and other securities which were deposited with the company's bankers as security for an overdraft. It was held that the income received from these investments should not be regarded as part of the profits for Excess Profits Duty purposes. It follows that the sums invested should not be regarded as capital employed in the business. (See Rule 91.)

Campbell, C. J.: " It is perhaps conceivable that in isolated cases the accumulated profits of a company might be invested in such form and upon such conditions as might induce the Income Tax authorities in their discretion to treat the money so invested as employed in the business, and also it is not necessary for us to decide in this case, nor do we decide, that as a matter of universal application the investments of a company can never be regarded as employed in its business; but we are all agreed

44. Exclusion of income from investments.—(contd.)

that by investing their accumulating profits in outside securities and depositing them with their bankers for the purpose of an overdraft, the company was not employing them in its business within the meaning of these words."

James Waldie & Sons, Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). The company carried on the business of coal merchants and exporters. They owned over 60 % of the capital of the Hirst Coal Co., Ltd., but had the sole right of disposal of the whole output of the coal of that company. The appellant company were entitled to a fixed commission of threepence per ton on the sales which they effected. Any bad debts incurred in respect of the sale of the coal was required to be borne by the appellant company. In the year 1916 the commission amounted to over £1,000.

The point at issue had regard to certain advances which had been made by the appellant company to the coal company. The advances had been made because for some years past the coal company had required loans to enable it to continue its output of coal. The appellant company contended that the advances were made in order that they might earn their commission, and that without making such advances their agency would have been unprofitable. They contended, therefore, that the amounts of the advances should be regarded as capital in their business, for purposes of the Excess Profits Duty computation. The Commissioners of

44. Exclusion of income from investments.—(*contd.*)

Inland Revenue opposed this view, contending that money so advanced was not required for the appellant's proper business, and was therefore not employed in that business.

The Court decided in favour of the company, holding that in a commercial sense the sums in question were employed in the appellant's business. It was on purely business grounds that they made the advances, and if they had had no other business than that of agents for the Hirst Coal Company there would have been no profits to assess.

Investments in Government War Securities.

Official notices have been issued from time to time, assuring the public that liability to Excess Profits Duty cannot increase by the mere fact of investment in Government War Securities.

The reasoning adopted is that regard is paid not to the nature of the investment, but to the possibility or probability of the capital sum being required for use in the business. Taxpayers are therefore assured that a Bank deposit has no more chance than a War Loan Investment of being deemed to represent part of the capital of the business. In determining the matter, the latter, just as much as the former, is regarded as money able to be used in the business whenever required. The only question is whether the financial condition of the concern is such that the stated sum can reasonably be viewed as a sum which it is advisable to have ready for actual use therein.

44. Exclusion of income from investments.—(*contd.*)

The following is the text of the principal official notices—

"EXCESS PROFITS DUTY AND WAR LOAN

"A misapprehension exists in certain quarters as to the effect of subscription to the War Loan on the liability to Excess Profits Duty.

"It has been suggested that if money is placed on deposit at a bank or invested in Treasury Bills, it will necessarily be treated as additional capital employed in the business, so as to entitle the owner of the business to an allowance in the Excess Profits Duty assessment; whereas the same money, if invested in War Loan, would be treated as withdrawn from the business. This is not the case. The Board of Inland Revenue can only regard money placed on deposit at a bank or invested in Treasury Bills as employed in the business (with the consequent addition to the profits of the yield therefrom), if the money will be required within a limited period for the purposes of the business. They will be ready to receive in connection with Excess Profits Duty returns, claims that holdings of War Loan should be regarded as employed in the business and to judge them by no less favourable test.

"The suggestion has also been made that by leaving capital on current account at a bank (without interest), taxpayers can secure the benefit of a like capital allowance for Excess Profits Duty purposes even when the capital is not and will not be

44. Exclusion of income from investments.—(*contd.*)

required for business purposes. The Government cannot regard a claim of this character as within the spirit or intention of the Excess Profits Duty Acts, and they propose to apply for Parliamentary sanction for any legislation[1] necessary to remove doubts upon this subject.

"There is therefore no warrant for the suggestion that taxpayers will suffer in relation to Excess Profits Duty by investing surplus funds in the War Loan."

"EXCESS PROFITS DUTY AND NATIONAL WAR BONDS[2]

"Inquiries having been made in various quarters as to the effect of subscription to National War Bonds on the liability to Excess Profits Duty, it is now announced by the Commissioners of Inland Revenue that the position with regard to investment in such bonds differs in no way from that of similar investments in War Loan, in relation to which notices appeared in the Press on 19th January and 12th March.

"Capital which is or will shortly be required for the purposes of a business will for Excess Profits Duty be treated as capital employed in the business, whether invested in War Loan, Exchequer Bonds, or National War Bonds[2]; and while claims that holdings shall be so treated must, in the diverse conditions of business, necessarily fall to

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[1] The matter has not in fact been the subject of legislation.

[2] A later statement issued by the Commissioners has added Victory Bonds, Funding Loan, and 5–15 year Treasury Bonds to the list of securities mentioned:

44. Exclusion of income from investments.—(*contd.*)

be determined according to the facts of individual cases, they will be judged by tests no less favourable than those applied to money on deposit at a bank or invested in Treasury Bills."

45. Development expenditure.

45. Expenditure for the development of the trade or otherwise in respect of the business may only be admitted if it is allowed under the Income Tax Acts, and, even then, only so much thereof may be admitted as appears to the Commissioners of Inland Revenue to be properly attributable to the period in question.

Deductions [for wear and tear or for any expenditure of a capital nature for renewal,[1] *or] for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 3.)

The whole of the enactment in question is set out above. It is not considered that the portion which is the subject of Rule 45 has any reference to the words "capital nature" which govern another sentence of the Act. This conclusion is founded in part on the position of the commas in the Act (exactly reproduced above, except as regards the bracket), but still more on the fact that *no* development expenditure of a capital nature is admitted under the Income Tax Acts.

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[1] *See* Chapter X.

45. Development expenditure.—(*contd.*)

This Rule would appear to give the Commissioners of Inland Revenue the right to insist on the re-apportionment of any charge shown in the accounts, such charge being of the same nature as the development expense previously cited. (This is the effect of the *ejusdem generis* rule.) Charges in respect of depreciation and renewals are dealt with in Chapter X. The general rule as to the correct apportionment of all matters is set forth in Rule 41. The present Rule would refer to advertising expenditure,[1] which might be exceptionally heavy in a particular year without affecting the profits of that year more than another (*e.g.*, advertising plant might be considerably renewed). Even more especially would it refer to businesses which require much "developing," that of a Land Development Company, for instance. Of course, no adjustment is likely to proceed on the principle that the necessary development expense of early years should be spread over the later period in which profits are expected. This might be to equalize the profits over the life of the company. But many expenses might require adjustment over neighbouring years. Any apparent injustice in the case of such a company would possibly be met by an application under Rule 27 for a modification of the percentage rate of profit to be expected from a business which could only expect to show a profit during a few of the years in which it exists.

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[1] See also p. 143.

46. Artificial or fictitious transactions.

46. No transaction or operation may serve to reduce artificially the amount of the profits. No fictitious or artificial transaction may be entered into with this object. Notice is required to be given if this has been done before the passage of the Act. A penalty of £100 may be imposed for non-compliance.

No deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 5.)

A person shall not, for the purpose of avoiding the payment of Excess Profits Duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation. (*Finance* (*No.* 2) *Act,* 1915, *s.* 44 (3).)

This rule, in its entirety, prohibits all evasion of the duty, whether by acts intended for that purpose or not. The first enactment printed above does not appear to refer to cases of evasion, but the second enactment clearly has that intent. It need only be remarked that an act may be perfectly legitimate and straightforward, and yet it may require to be disregarded for Excess Profits Duty purposes. The penalty would not be incurred in such a case.

47. Sub-stitution of other assets.

47. Where any concern sells the particular assets which it is its business to manage, and purchases new assets, the capital must be taken to have varied only by the difference between the selling price of the old assets and the purchase price of the new assets.

It is hereby declared that, where any business or trade is confined to the management of any particular assets, but power exists to substitute other assets for those particular assets or any of them, such a substitution shall not be deemed, for the purposes of Part III of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased shall be estimated on the same basis for all the purposes of Part III of this Act. (*Finance* (*No.* 2) *Act,* 1915; *Fourth Schedule, Part II*, 6.)

The point is that the variation in capital is to be measured according to the difference between the price obtained (for the old assets) and the price given (for the new assets) at the same time and on the same level of values. It must not be measured according to the difference between the purchase prices of the old assets (on an out-of-date level of values) and of the new assets (on a present-day level of values).

47. Substitution of other assets.—(*contd.*)

For example—

	£
Ship purchased in 1908 for . .	15,000
and sold in 1915 for . . .	25,000
New ship purchased in 1915 for. .	20,000

But for the rule under review, the shipowner might claim that his capital had increased by £5,000 (£15,000 to £20,000). Under the rule, his capital has decreased by £5,000. Instead of receiving an allowance under Rule 98, he must suffer an adjustment under Rule 99.

The above rule does not apply to shipping concerns to whom the special rules of Chapter XV have been applied.

N.B.—In theory, this rule is not limited to Shipping Companies.

CHAPTER VII

The Computation of Profits : the Restriction of Deductions for Remuneration of Officials

GENERAL RULE REGARDING RESTRICTION—RECOUPMENT BY EMPLOYERS—COMPANY TREATED AS FIRM.

48. The general rule is that remuneration allowed to persons concerned in the management of a business for any accounting period may not exceed the corresponding amounts (or a proportionate part thereof, as the case requires) allowed in the last pre-war trade year. But the Commissioners of Inland Revenue may depart from this rule in special circumstances, or when the remuneration depends on profits. **48. Restriction.**

N.B.—It appears that, apart from the specific enactments regarding remuneration, the Commissioners may decline to regard the full payments made to a relative of the proprietor as made for trade purposes ; *see Johnson* v. *Commissioners of Inland Revenue* (page 138).

Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 5.)

Payments made to directors, managers, and others are not in themselves liable to Excess Profits Duty by direct assessment. But for the present rule,

48. Restriction.—(*contd.*)

therefore, a company might prefer to pay its excess profits to its directors and so reduce its nominal profits below the margin of liability. This could very easily happen where the managing officers were also considerable shareholders.

An example will be given showing the operation of the general rule, permitting increments to *bonâ fide* employees but disallowing any increase in the remuneration of the management.

	Pre-war years.		1916.
Profits before charging salaries, fees, etc. . . .	£10,800	£12,600	£18,400
Salaries to clerks, etc.	1,250	1,470	1,730
Salaries and fees to the management	2,500	2,800	3,500
Net profits . .	7,050	8,330	13,170

Standard =

$$\frac{£7{,}050 + 8{,}330}{2} = £7{,}690$$

Profits of Accounting Period = £13,170
Plus £3,500 – £2,800 = 700
£13,870

Excess = £13,870 – £7,690 – £200 (allowance) = ... £5,980
Duty (at 60%) = ... £3,588
Of which 60% on £700 may be recovered from directors . . £420

48. Restriction.—(*contd.*)

For purposes of any future allowances (Rule 5) and of the Income Tax computations (Rule 52), the company must be regarded as having paid £3,168, and the particular directors concerned £420.—See the next rule.

In the House of Commons, Ministers have distinguished between—

(*a*) cases in which the persons engaged in the management are *bonâ fide* servants of the company, their interest being quite distinct from that of the proprietors; and

(*b*) cases in which the persons engaged in the management are virtually identical with the proprietors of the company.

Until the discussion on the Finance Bill, 1916, the Commissioners of Inland Revenue, acting within the discretionary powers referred to in the closing sentence of Rule 48, were lenient in the case of (*a*). But during that discussion, the Government accepted a new clause moved by Sir J. Harmood-Banner, which is the subject of Rule 49. This clause made directors, managers, etc., indirectly liable to the duty in respect of increase in remuneration. In accepting the clause, Mr. McKenna (*Chancellor of the Exchequer*) said that the lenient action in the case of (*a*) must be withdrawn in part, and that Excess Profits Duty would be levied, through the company, on part of the increase of remuneration in the case of (*a*), say, on every individual increase beyond £2,000. That is to say, a director receiving £5,000 per

48. Restriction.—(*contd.*)

annum before the war and £10,000 per annum during the war might bear Excess Profits Duty (through the company under Rule 49) on £3,000 [£10,000 – (£5,000 + £2,000)].

Mr. McKenna: "We shall have to fix some limit, because I do not wish at all to withdraw from a concession made last year. We shall have to fix some limit which we shall always allow as an expense of the business, but beyond that we should not propose to allow these large sums as an expense of the business. . . . Last year we agreed to make an allowance, and that in estimating the profits for the purpose of Excess Profits Duty, the additional amount paid to the manager should be treated as an expense. We have followed that rule. We did not intend that that rule should apply where the manager who was getting £1,000 now gets £15,000. An increase of that kind of war profits was never intended. Now we have come to the conclusion that we must fix a limit beyond which the excess earnings of a manager, who is paid by the percentage on the profits, must not be allowed to be reckoned as an expense in the business. Suppose we limit it to £2,000[1] a year—I do not say that is the figure, but I take it because it has been mentioned—and the manager gets £10,000, the £2,000 would be treated as an expense and the £8,000 as an excess profit."

As regards cases under (*b*), the "general rule" (Rule 48) is applied, except where Rule 50 is made to operate.

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[1] £2,000 is the margin allowed in practice in such a case.

48. Restriction.—(contd.)

The right of the Commissioners of Inland Revenue to restrict charges in respect of remuneration was called in question in **Rex v. Inland Revenue Commissioners, ex parte William France Fenwick & Co., Ltd., 1917.** It was held that even when the remuneration depends on profits (under pre-war agreements in this case) the Commissioners have the right to disallow all or part of the remuneration charged in excess of that of the last pre-war year.

Reading, L.C.J.: " By paragraph 5 (of Schedule IV, Part I), it is provided that any deduction allowed for the remuneration of directors shall, as a general rule, not exceed the sum allowed for that purpose in the last pre-war trade year. It may have been thought that that might lead to injustice, and accordingly Parliament provided for it, and excepted from the general rule cases in which the Commissioners ' owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on profits of the trade or business, otherwise direct.'

" With regard to the first of those conditions, the existence of special circumstances, it is not disputed that it is entirely within the discretion of the Commissioners whether they will draw direct or not. It is for them to determine whether the facts and circumstances established constitute special circumstances upon which they will exercise their discretion. If they find that there are no special circumstances, there is no discretion ; if they find there are, there is a discretion. No doubt

48. Restriction.—(*contd.*)

what was thought was that there might very well arise conditions which would make it fair and reasonable that some further remuneration should be paid during the war year. It was thought impossible to prescribe what was to happen in every conceivable condition of things connected with the trade and business of the whole country during the war, and Parliament solved the difficulty by giving this wide discretion to the Commissioners."

As regards the second condition (the dependence of the remuneration on the profits)—

" It is contended with regard to that condition that, when once the Commissioners have found that the remuneration of the directors depends on the profits of the trade or business, they have no longer any discretion, and it is obligatory of them to give the direction. The whole question is whether that is a proper interpretation of the clause. I cannot think that it is. It seems to me that the introduction of the sentence beginning with the words ' or to the fact ' was for the purpose of pointing to that fact of the remuneration depending on the profits as being a circumstance which may be taken into account by the Commissioners in the exercise of their discretion. I cannot read the clause as imposing on them the statutory application in all circumstances, when once they have found that the fact does exist to allow this deduction of the profits."

Avory, J.: " It seems to me to be plain that there are two events in which the Commissioners of Inland Revenue may exercise their discretion. One is where they find that special circumstances exist, the other where they find that the remuneration of the managing directors depends on the profits."

48. Restriction.—(*contd.*)

Swinfen Eady, L.J. : As regards the discretionary powers of the Commissioners of Inland Revenue owing to special circumstances—

" . . . the Commissioners may determine whether there are any special circumstances under which more than the pre-war rate of remuneration to the directors should be allowed to be deducted. It may well be, for instance, without there being any contract to pay additional remuneration to the directors, that by reason of extra and diligent services rendered by the directors, the company may think there is a fair case for the payment of extra remuneration ; and if the Commissioners take that view, they may allow that sum as a deduction in assessing the profits."

As regards the discretionary powers of the Commissioners of Inland Revenue, where the remuneration depends on the profits—

" Having regard to the fact that this Act is dealing with excess profits, which alone are made the subject of taxation, where the remuneration of the directors depends on the profits, probably in all or most cases there would be an increase in the remuneration of the directors ; as the profits went up so would the remuneration increase, if dependent on profits. It may have been thought that it was expedient to prevent any question arising as to

48. Restriction. —(*contd.*)

whether that could be deemed a special circumstance, seeing that it would probably arise in almost every case of Excess Profits Duty; it may have been thought that by way of precaution it was expedient specially to mention it. It may well be that it was for that reason that the second branch of the exception was inserted."

In **Thompson Bros. & Co. v. Amis, 1917,** the Court dealt with the scope of the words descriptive of the class of director, manager, etc., whose remuneration may be the subject of restriction. An employee was engaged as "market clerk" but the agreement did not describe the exact nature of his employment or duties. In point of fact his work was of a much higher character than that of other market clerks employed by the firm. His remuneration (after a minimum of £600) was based on the firm's profits and he signed cheques for the firm.

Held,

(1) that the question of title to recover from directors, etc., was within the jurisdiction of the Court (the argument that arbitration should determine the matter was abandoned: the Judge rejected the further argument that the action was not maintainable until the duty had been paid to the Revenue);

(2) that the second sub-section of Section 49, Finance Act, 1916, was not limited to cases within the scope of the first sub-section, but that it applied to cases within paragraph 5 of

48. Restriction. —(contd.)

Part I of the Fourth Schedule (*i.e.*, that Rule 49 is coextensive with Rule 48 and not merely with Rule 50 ; and

(3) that the market clerk in question was less than a manager but more than a clerk, and that his remuneration was correctly considered to be within the restrictive clauses of the Excess Profits Duty legislation.

Sargant, J.: "That phrase 'person concerned in the management of the trade or business' is obviously intended by the Legislature to be a phrase of wider denotation than, and including more persons than are included in, the term 'manager.' Looking at the matter all round, it seems to me abundantly clear that, if not actually a manager, as to which I have some doubt, the defendant was at any rate a person concerned in the management of the business in question.

" . . It is quite clear that he had no right to receive any specific parts of the profits. He could not under any circumstances, I think, have had a receiver of any part of the profits appointed . . . but in my judgment I should be straining words and not giving them a broad business meaning, such as I think ought to be given to words in legislation of this kind, if I were to hold that the defendant did not come within the language of Sub-section 3 merely because he had no specific right against any part of the profits of the business."

In **Collette v. Lockie, Pemberton & Co.** (*Chancery*

48. Restriction.—(*contd.*)

Division, 1918), the plaintiff was employed by the defendants under an agreement dated the 26th July, 1915, as "Assistant Manager" of a business in Cuba at a salary and commission of 15 per cent. on the profits. A "Manager" in Cuba was also appointed to whom the plaintiff was to defer. The plaintiff negotiated and carried out all the rice sales in Cuba. In June, 1916, he was recalled to London, where he was employed substantially on clerical work, but he still managed such Cuban business as was done from London and received 15 per cent. of the profits.

It was held that plaintiff was a person concerned in the management of the business, and that the Commissioners of Inland Revenue might refuse to allow a deduction to firms as well as to incorporated businesses in respect of persons so employed.

In **Williamson Film Printing Co., Ltd., v. Commissioners of Inland Revenue** (*King's Bench Division*, 1918), the remuneration of the Managing Director of the Company was £300 salary and £98 commission at 5 per cent. during 1913–14. In October, 1914, his remuneration was increased to £500 and 10 per cent. commission; the total remuneration for 1914–15 proving to be £1,230. For the latter year the Commissioners of Inland Revenue declined to allow a deduction in excess of the £398 paid in the last pre-war years. The Company sought to appeal to the Income Tax Commissioners against this decision.

It was held that the determination of the

48. Restriction.—(*contd.*)

Commissioners of Inland Revenue was final and not subject to appeal to the General or Special Commissioners of Income Tax.

Sankey, J.: " In this particular case the Commissioners of Inland Revenue did not direct that anything more than £398 should be allowed as a deduction. I will read the sentence: 'The Commissioners of Inland Revenue, after considering the facts and circumstances of the case on application made to them, had declined to direct under the discretion vested in them by Clause 5 that any portion of the amount by which the sum of £1,230 exceeded the said sum of £398 should be allowed as a deduction.' (*Counsel for the Company*) relied upon Section 45 of the Finance Act (No. 2), 1915: 'The Excess Profits Duty shall be assessed by the Commissioners of Inland Revenue and shall be payable at any time not being less than two months after it is assessed.' And then he points out the appeal subsection of Section 45, wherein it is provided: 'Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue may appeal to the General Commissioners.'

" (*Counsel's*) argument is this. He says that that section gives an appeal in the widest possible terms, that is, any person who is dissatisfied with the amount of any assessment will have a right to appeal.

" I think I have to consider the meaning of Clause 5 of Part I of the Fourth Schedule, because I think it falls for determination whether that section is of

48. Restriction.—(*contd.*)

such a character that there is a clear and certain indication that the Commissioners of Inland Revenue are the final judges in this matter. Now I draw attention to the words. They are somewhat peculiarly framed, and I will leave out the words which are redundant: 'Any deduction allowed for the remuneration of directors shall not, unless the Commissioners of Inland Revenue direct, exceed the sums allowed for that purpose in the last pre-war trade year.' Now it appears to me that this is a definite prohibition preventing a deduction unless the Commissioners of Inland Revenue direct the deduction. That is putting it negatively. Putting it positively, I think it means this, that such a direction as is therein referred to is a condition precedent to the allowance of the deduction, and that the discretion of the Commissioners of Inland Revenue is absolute and unappealable."

The Executors of E. J. Coleman, deceased, v. The Commissioners of Inland Revenue (*King's Bench Division,* 1918). In this case the proprietor of a business paid larger remuneration to the managers of two branches, during an accounting period, than was paid to them in the last pre-war year. The Commissioners of Inland Revenue declined, for Excess Profits Duty purposes, to allow a larger deduction in this regard in the accounting period than was made in the last pre-war trade year. The executors of the proprietors of the business sought to appeal to the Income Tax Commissioners against this decision. The matter was determined

48. Restriction.—(contd.)

against the proprietors in the King's Bench Division at the same time as the decision was given in *Williamson Film Printing Co., Ltd.*, v. *the Commissioners of the Inland Revenue.* No separate judgment was given in this case, which was held to follow the *Williamson Film Printing Co.* case.

Pegg and Ellam Jones, Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). The first point in this case concerns payments made to directors in rather unusual circumstances. The three directors of the company were entitled, under agreement, to salaries and to a commission upon the net profits of the company in each year up to the payment of 10 % dividend. In 1911, owing to the dividend not being so large as 10 %, it was resolved that if the profit were sufficient to pay a dividend of 7½ % and for £500 to be transferred to reserve, any surplus profits should be divided between the directors. It happened, however, that the £500 could not be placed to reserve, and the company thereupon passed a resolution requiring a bonus to be paid to the directors. It was held that, in these circumstances, the bonuses could not be regarded as remuneration to the directors but as a distribution of profits. In all years, therefore, the profits of the company should be computed without any deduction in respect of such bonuses.

Rowlatt, J.: " The first resolution was that the surplus profits were to be divided after 7½ % had been paid to the shareholders, and after there had

48. Restriction.—(*contd.*) been £500 carried to the reserve. I assume that that is not going to exhaust all the profits. Those surplus profits are to be divided among the directors, who, I have no doubt, were the principal proprietors of the business, who gave their time and put in their money. If it turned upon that resolution I think I must look at it as being a division of profits, and not the payment of an expense.

"Now the resolution which was acted upon at the end of the year is not different in kind, although it is worded, naturally, in a different way. The £500 had not been paid, and it was not proposed to divide the surplus profits. That was not the way in which it shaped. The 7½ % having been paid to the shareholders, they paid a lump sum to each of the directors out of the profits which remained, as I think, after the distribution of dividends had been made to the shareholders, and I think I must look upon it as a division of profits, and not as a payment of an expense of the business. I need not say that what I am deciding now does not affect the question—I say no more—as to whether there was an earning of the directors, in their capacity as directors, for other Income Tax purposes. The question is not the same one."

The second matter decided in this case was as follows: A director of the company retired three years before the termination of his agreement. The company straightway paid him a sum equivalent to the salaries he would have received had he carried out his agreement for the three years. The sum

48. Restriction.—(*contd.*)

paid was £550; it was paid in November, 1912; it was the amount of salary which would have accrued if he had continued to serve until August, 1915. In the company's accounts, the payment of £550 was carried over three years, *i.e.*, £100 was charged in the year ending May, 1913, £200 in the year ending 1914, and £250 in the year ending May, 1915. For purposes of computing profits the revenue permitted the allocation. The revenue, declined, however, to regard the £200 as having been paid in the year ending May, 1914 (the last pre-war trade year), for the purposes of ascertaining the maximum amount of remuneration to directors to be allowed as a deduction in accounting period.

The Court held that the Revenue was correct.

Rowlatt, J.: "The question arises whether, in the second of those years, when they were charging their revenue with £200, which they were really keeping in their pockets to replace the money which they were out of by having settled in advance with this gentleman, the amount which they paid into their revenue account in that way is to be treated as the remuneration of a manager. Now, he was not a manager; it is immaterial whether he was alive; they might have been paying another manager; I am told they did not, but they might have been; but he certainly was not a manager. I cannot see myself how I can possibly say that this payment was a payment, in the year in which it is treated in the accounts, for the remuneration of the manager."

48. Restriction.—(contd.)

Commissioners of Inland Revenue v. Auld & Pemberton, Ltd. (*King's Bench Division, Ireland,* 1918). In this case the Commissioners of Inland Revenue had refused to allow a deduction from the profits of the accounting period in respect of the remuneration of the directors of the company, in excess of the remuneration deducted in the last pre-war trade year. The Special Commissioners, on appeal, decided that the matter was one for determination by the Commissioners of Inland Revenue, and that they had no jurisdiction to determine the question. On a rehearing by the Recorder of Belfast, the Recorder considered that he had jurisdiction and allowed an increased deduction. The matter was further argued in the King's Bench Division, Ireland, where it was decided that neither the Special Commissioners nor the Recorder nor any other authority had jurisdiction in this matter, which was solely within the discretion of the Commissioners of Inland Revenue.

49. Recovery from director or manager.

49. If Rule 48 is insisted upon as respects any accounting period ending on or after 1st July, 1915, the concern may recoup itself by recovery from the director or manager in question. Any sum so recovered is to be treated as having been paid by the director or manager.

If as respects any accounting period ending on or after the first day of July, nineteen hundred and fifteen, the Commissioners of Inland Revenue refuse to allow a deduction in respect of any increase in the remuneration of directors of any trade or business, and the taxpayer is

49. Recovery from director or manager.—(contd.)

required to pay Excess Profits Duty in respect of the disallowed deduction, the taxpayer shall be entitled to recover from any such director the amount which the taxpayer has paid by way of Excess Profits Duty in respect of the increase; but any amount so recovered shall, unless the Commissioners otherwise direct, be treated as Excess Profits Duty paid by the director from whom it is recovered and not as Excess Profits Duty paid by the taxpayer. (*Finance Act,* 1916, s. 49 (2).)

In this section, the expression "directors" includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business. (*Finance Act,* 1916, s. 49 (3).)

The following decisions have to do with disputes between employers and employees entitled to a share of the profits of the business. The question is whether the employee's share should be computed on the profits as they are before Excess Profits Duty is paid, or on the net amount. The former view was taken, until the decision in the Court of Appeal in *Patent Castings Syndicate, Ltd.,* v. *Etherington,* but, of course, the question must always depend on the terms of the agreement.

Patent Castings Syndicate, Ltd., v. Etherington (*Court of Appeal,* 1919). Under an agreement, the company employed defendant as work's manager for five years, from 1st January, 1917, at a salary and a commission based on the "net profits" as certified by the auditor of the company.

The Court of Appeal upheld the decision of the High Court following *Collins* v. *Sedgwick* (page 4) and *Condran* v. *Stark* (page 2), holding that "net profits" are profits after the deduction of Excess Profits Duty.

The effect on previous cases is as follows—

Affirmed—*Collins* v. *Sedgwick* (page 4); *Condran* v. *Stark* (page 2).

Overruled—*Fellows, Ltd.* v. *Corker* (page 185.)

Qualified (distinguished on the facts, but general principles overruled)—*Hollins* v. *Paget* (page 181); *Thomas* v. *Hamlyn* (page 184).

Warrington, L.J.: "The question raised by the appeal is, what is the meaning of the expression "net profits" in an agreement between a company and its works manager, providing remuneration for him calculated at a certain percentage on the net profits of the business for the year. The defendant contended that the expression denoted the balance of the net receipts over the net payments, and must be ascertained before any Excess Profits Duty was paid. The plaintiffs contended that "net profits" meant the sum which was available for distribution as dividend among the shareholders, and could only be found after deducting Excess Profits Duty. One would have thought that in dealing with a business agreement of that kind, what the company would be intending to divide between themselves and their servants was what belonged to themselves, and not a sum payable to a third person—in the present case His Majesty's Treasury. If that were so the net profits would be the profits available for distribution among the

49. Recovery from director or manager.—(*contd.*)

shareholders. Certain provisions in the agreement point very strongly in that direction. Payment was to be made within seven days of the annual general meeting, which was held to inform the shareholders what were the trading results of the year and to resolve upon the dividend to be distributed. Then there is the provision that for the purpose of calculating the commission the certificate of the auditor as to what constituted net profits was to be conclusive. All that seemed to point to the conclusion that the company intended to give their servant a portion of the profits which would otherwise be paid to the shareholders.

His Lordship proceeded to emphasize the distinction between Excess Profits Duty and Income Tax as regards the basis (the excess), the non-distribution of the tax between the shareholders, and the deductibility of the Excess Profits Duty in computing profits for Income Tax purposes. He concluded that " the statutory provisions show that Excess Profits Duty is not a part of the profits available for payment to the shareholders, but an outgoing which has to be paid to a third party before the profits are ascertained."

The decision in **William Hollins & Co., Ltd., v. Paget, 1916**, was not overruled in the above case, but its principle was virtually overruled. *Warrington, L.J.*, observed that this decision was distinguishable on the facts, the term " net profits " not being used. The decision was as follows.

A manager's commission was required to be based

49. Recovery from director or manager.—(*contd.*)

on the profits arising in excess of the amount required to pay certain dividends.

The agreement provided *inter alia* as follows—

Clause 4 *:* "There shall be paid by the company to the manager by way of salary such a sum as, with any fees he may receive as a director of the company, shall amount to £850 per annum. Such salary shall commence from 10th March, 1913, and shall be payable monthly."

Clause 5 *:* "Whenever the profits of the company made during the financial year, or other period comprised in the accounts submitted to an ordinary general meeting of the company in each year, are more than sufficient to pay the preference dividends to the close of such year, or other period, and also to pay a dividend on the ordinary paid-up capital of the company for such year, or other period, at the rate of 7 per cent. per annum, the manager, in addition to his salary aforesaid, shall be paid by way of commission a sum equal to 5 per cent. of the excess. Preference dividends in this clause include the dividends on all shares ranking as regards dividend in priority to the ordinary shares."

It was decided that the commission should be computed on the gross profits, before the payment of Excess Profits Duty. *Eve, J.*, based this decision on two grounds: First, that the Finance Act, 1916, in allowing Excess Profits Duty to be set against the Munitions Levy in certain circumstances (Rule 139) assimilated the former to the latter. As the latter was clearly a payment of

49. Recovery from director or manager.—(contd.)

a part of the profits, the former should be similarly regarded, in which case the profits (on which the commission was based) included the Excess Profits Duty. Secondly, that the company's title to recoup itself as against the manager (Rule 49) was based on the assumption that the remuneration was paid out of the gross sum in respect of which the duty was chargeable.

Eve, J., stated that the decision of the Court must depend on the true character of the Excess Profits Duty: "Is it a percentage of the profits of the company's trade or business appropriated for public purposes, or is it a charge or duty imposed on the company which only relates to profits in so far that the amount is determined by ascertaining how much—50 per cent. or 60 per cent., as the case may be—of the company's profits, computed as required by the Acts, amounts to? . . . It is, in my opinion, a contribution to the Exchequer of a proportion of the profits, and for the purposes with which I am dealing, stands very much on the same footing as the Income Tax. It ought not, I think, to be deducted before ascertaining the excess profits on which the defendant's commission is to be calculated. . . . If the Excess Profits Duty is first deducted and his remuneration is calculated only on the balance of excess profits, the company would, in effect, under this section be recovering from the director a payment not made on his own behalf, and he would be charged twice over with the duty."

49. Recovery from director or manager.—(contd.)

Thomas v. Hamlyn & Co., 1916, was a clearer case, inasmuch as the commission of the manager in question was based on the profits of certain branches. It was held that such profits could not be reduced by a portion of the Excess Profits Duty which was chargeable on the whole business.

(In the Court of Appeal, in *Patent Castings Syndicate, Ltd.* v. *Etherington,* page 179, *Warrington, L.J.*, dissented from *Rowlatt, J.'s,* general view of the Excess Profits Duty as expressed below, but he agreed that the manager in this case was entitled to a commission based on the profits of part of the business only.)

Rowlatt, J.: "It is contended that the Excess Profits Duty is not Income Tax; but except that there are variations in the method of computation, I cannot see what else it is but an Income Tax. It is a tax upon the profits made during the year, in so far as they exceed a certain standard. . . . Excess Profits Duty is simply a claim by the Government to take a share of the profits just as in the case of Income Tax. With respect to the profits, the manager entitled to a percentage and the Government to duty must come in on the same footing, and both must be paid in full. . . . Further, when we consider this particular agreement, the plaintiff is clearly right upon another ground. This business has numerous branches, and the plaintiff is concerned only with four of them and he is entitled to a percentage upon the net profits of those four branches taken together.

49. Recovery from director or manager.—*(contd.)*

There is no Excess Profits Duty in respect of any particular branch : it is a tax upon the business as a whole. Therefore, under this agreement there cannot be any question of deducting Excess Profits Duty.

" The further point was taken that the certificate of the auditors is conclusive, and precludes this claim by the plaintiff. I think that the certificate of the auditors which has been produced shows upon its face that it is not such a certificate as is required by the agreement, and therefore it cannot stand in the way of this claim."

In **Fellows, Ltd., v. Corker, 1917,** the managing director was, under a pre-war agreement, entitled to a salary of £600 per annum, and also to a commission of 25 per cent. on the net profits of the company. The net profits were required to be arrived at in a specified manner, deductions from gross profits being allowed for depreciation, renewals, certain dividends and certain directors' fees, but not for loan interest, certain additional remuneration to employees, etc., and Income Tax.

It was held that Excess Profits Duty was *not* to be deducted from gross profits before calculating the managing director's commission. (Overruled by *Patent Castings Syndicate, Ltd.* v. *Etherington,* page 179.)

Neville, J., referred to the decision in the Income Tax case of *Attorney-General* v. *Ashton Gas Co.*[1] as being that—

" In ascertaining the profits, you cannot deduct

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[1] (1906) A.C. 10.

49. Recovery from director or manager.—(*contd.*)

a charge upon the profits before you ascertain what the profits are. . . . It seems to me quite clear in the present case that this Excess Profits Duty is a deduction which can only be made after you have arrived at the net profits, and that in ascertaining net profits a charge ought not to be deducted, which is a charge not generally on the company, not a liability of the company, but liability upon the profits when they are ascertained."

See decision in *Thompson Bros.* v. *Amis,* 1917, set out after Rule 48.

See also decisions as to general character of Excess Profits Duty set out after Rule 1.

The last sentence of Rule 49 has reference to the set-off referred to in Rules 5 and 7, and to the allowances described in Rules 52 and 53. For none of the purposes referred to in these rules can the company be assumed to have borne the duty recovered from directors and managers. Such directors, etc., cannot benefit under Rules 5 and 7, but their Income Tax assessments may be reduced under Rule 52.

50. Company may be treated as firm where percentage standard adopted.

50. Where a percentage standard has been adopted, the Commissioners of Inland Revenue have power to regard any concern in which the directors or managers have a controlling interest as a firm, and the directors, etc., as partners. In this case no remuneration drawn by them may be allowed as deductions for Excess Profits Duty purposes.

Where the pre-war standard of profits is taken to be the

50. Company may be treated as firm where percentage standard adopted.—(*contd.*)

percentage standard or is calculated by reference to the statutory percentage in the case of any trade or business owned or carried on by a company or other body corporate whose directors have a controlling interest, the Commissioners of Inland Revenue may, if they think fit, as respects any accounting period, including a past accounting period, for the purpose of the provisions relating to the statutory percentage and for the purpose of the determination and computation of profits under Part I of the Fourth Schedule to the principal Act, treat the company or body corporate as if it were a firm and not a company or body corporate and the directors or any of them as if they were partners in the firm. (*Finance Act*, 1916, s. 49 (1).)

In this section, the expression " directors " includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds of the trade or business. (s. 49 (3).)

(See Rule 26.)

Rule 50 may be illustrated as follows—

	£
Capital at 1st January, 1914 . .	108,000
(Percentage Standard adopted)	
Profits to 31st December, 1914 .	23,000

The £23,000 is arrived at after charging—

£4,500 fees to directors and managers who are the main shareholders, and therefore hold a controlling interest, and

£1,000 to a director who owns no shares but has been appointed on account of his technical knowledge. The £1,000 has been paid for several years.

50. Company may be treated as firm where percentage standard adopted.—(*contd.*)

The company is regarded as a firm, and the £4,500 as being paid to partners.

	£
The profits are, therefore	27,500
Standard 7 % (not 6 %) on £108,000 (Rule 26) =	7,560
Excess	19,940
Allowance	200
Net excess	19,740
Tax (at 50 %)	£9,870

Had the £1,000 paid to the technical director arisen first in 1914 the Commissioners of Inland Revenue might (but apparently would not) have added that to the profit also. If they had done so the company could not have recouped themselves, inasmuch as the accounting period ended before 1st July, 1915.

CHAPTER VIII

The Computation of Profits: the effect of Income Tax and Colonial and Foreign Taxation; also the effect of Excess Profits Duty on the Income Tax computation[1]

EXCESS PROFITS DUTY: NO ALLOWANCE FOR EXCESS PROFITS DUTY OR INCOME TAX—INCOME TAX: ALLOWANCE FOR EXCESS PROFITS DUTY AND ADJUSTMENT FOR EXCESS PROFITS DUTY REPAID—COLONIAL OR FOREIGN TAXATION—COLONIAL EXCESS PROFITS DUTY.

51. In computing liability to Excess Profits Duty, no allowance is to be made on account of any payment of Excess Profits Duty or of Income Tax. **51. Excess Profits Duty computation.**

As regards "controlled firms," Munitions Acts levies are equivalent to Excess Profits Duty payments in this connection. (See Chapter XX.)

See Rules 54 and 55 as regards foreign and colonial taxation.

Corporations Profits Tax may not be deducted from profits in computing liability to Excess Profits Duty. In computing liability to Corporations Profits Tax, a deduction is made in respect of Excess Profits Duty. (*Finance Act*, 1920, *s.* 53 (*g*).)

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[1] Coal Mines Excess and Guaranteed Payments are not dealt with in this book. See Chapter VII of the Author's *Coal Mines Excess Payments, etc.*

51. Excess Profits Duty computation.—(contd.)

Deductions shall not be allowed on account of the liability to pay, or the payment of, Income Tax or Excess Profits Duty. (Finance (No. 2) Act, 1915, *Fourth Schedule, Part I,* 4.)

See example after Rule 52 illustrating the effect of that rule and this.

52. Income Tax computation; payments of Excess Profits Duty.

52. In computing liability to Income Tax, an allowance is to be made for payments of Excess Profits Duty. The allowance will be made against the profits of the year which included the end of the accounting period concerned. If it has not been practicable to make the allowance in this way the sum due may be set against Excess Profits Duty due or may be repaid.

Where any person has paid Excess Profits Duty under this Act the amount so paid shall be allowed as a deduction for the purpose of Income Tax in computing the profits and gains of the year which included the end of the accounting period in respect of which the Excess Profits Duty has been paid. (Finance (No. 2) Act, 1915, *s.* 35 (1).)

Where in any Income Tax year the profits or gains from which a deduction may be made under this section come into computation, but owing to the time at which the amount of Excess Profits Duty became ascertained it was impracticable to give effect to the deduction when assessing Income Tax, the amount by which the Income Tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for Excess Profits Duty, or, if there is no Excess Profits Duty, shall be repaid to the taxpayer. (Finance (No. 2) Act, 1915, *s.* 35 (2).)

52. Income Tax computation; payments of Excess Profits Duty.—(*contd.*)

Rules 51 and 52 may be illustrated as follows—

COMPUTATION OF PROFITS

For Income Tax Purposes

	1911.	1912.	1913.	1914.
	£	£	£	£
Balance of account .	5,000	6,000	4,000	8,000
Add—				
Income Tax charged.	320	350	300	340
Interest paid away .	1,000	1,000	900	800
Total . .	6,320	7,350	5,200	9,140
Deduct—				
Annual Value of Trade Premises . .	120	120	120	120
	£6,200	£7,230	£5,080	£9,020

For Excess Profits Duty Purposes

	1911.	1912.	1913.	1914.
	£	£	£	£
Balance of account .	5,000	6,000	4,000	8,000
Add—				
Income Tax charged.	320	350	300	340
Excess Payments to Directors. . .	—	—	—	1,000
	£5,320	£6,350	£4,300	£9,340

The Income Tax Assessment for 1914–15 would be

$$\frac{£6{,}200 + £7{,}230 + £5{,}080}{3} = £6{,}170$$

In the absence of peculiar circumstances, the Excess Profits Duty assessment for the accounting period ended 31st December, 1914, would be calculated as shown on next page.

52. Income Tax computation; payments of Excess Profits Duty.—(*contd.*)

	£
Profits of Accounting Period . .	9,340
Standard of Profit $\frac{\pounds 6{,}350 + \pounds 5{,}320}{2}$ =	5,835
Excess . .	3,505
Allowance .	200
	2)3,305
Duty . .	£1,652

As the accounting period closed on a date within the trading year 1914, the above £1,652 may be deducted from the profits of that year (£9,020) for purposes of future Income Tax assessments. Thus—

1915–16 Income Tax assessment—

$$\frac{\pounds 7{,}230 + 5{,}080 + (9{,}020 - 1{,}652)}{3} = \frac{\pounds 19{,}678}{3}$$

$$= \pounds 6{,}559$$

If tax has already been paid on £7,110—

$$\left(i.e., \frac{\pounds 7{,}230 + 5{,}080 + 9{,}020}{3}\right)$$

the overcharge (£551 @ 3s. = £82 13s. 0d.) may be set against the Excess Profits Duty (£1,652) or repaid.

The note as to the accounting period ending within a particular trading year has special reference to a case in which the accounting periods do not always coincide with the period taken as the trading year for Income Tax purposes. Thus the accounting period might extend over six months only.

53. In computing liability to Income Tax, any amount of Excess Profits Duty repaid is to be added to the profits of the year in which the repayment is received.

53. Income Tax computation: repayment of Excess Profits Duty.

But where any person has received repayment of any amount previously paid by him by way of Excess Profits Duty, the amount repaid shall be treated as profit for the year in which the repayment is received. (*Finance* (*No.* 2) *Act,* 1915, *s.* 35 (1).)

Rule 53 prevents much re-computation of Income Tax liability which would otherwise be necessary.

We continue the example given under Rule 52, in which the Income Tax assessment for 1915–16 was taken to be—

$$\frac{£7{,}230 + 5{,}080 + (9{,}020 - 1{,}652)}{3} = \frac{19{,}678}{3} = £6{,}559,$$

i.e., the average profits of 1912, 1913, and 1914. The 1914 profits (£9,020) have been reduced by the Excess Profits Duty liability of £1,652.

It may now be assumed that the Excess Profits Duty liability proved to have been wrongly computed, £1,652 giving place to £1,600 (say). If the excess of £52 has not been paid, the Income Tax assessment for 1915–16 would be amended automatically in accordance with Rule 52. It would be :

$$\frac{£7{,}230 + 5{,}080 + (9{,}020 - 1{,}600)}{3} = \frac{19{,}626}{3} = £6{,}542$$

53. Income Tax Computation: repayment of Excess Profits Duty.—(*contd.*)

But if the full £1,652 has been paid, Rule 53 operates on the repayment of the excess £52. The first question to ask is: When was the repayment obtained? Say, in 1915. If this is so, the £52 must be added to the 1915 profits for all purposes of Income Tax. Taking the 1915 profits (without the £52) to be £10,000, the 1916–17 Income Tax computation is—

$$\frac{£5,080 + (9,020 - 1,652) + (10,000 + 52)}{3} = \frac{22,500}{3}$$
$$= £7,500.$$

For future Income Tax computations, the 1914 and 1915 profits are assumed to be (£9,020 – 1,652) and (£10,000 + 52) respectively.

54. Excess Profits Duty computation: effect of colonial or foreign taxation.

54. Payments made on account of Colonial or foreign taxation may be deducted from the profits for Excess Profits Duty purposes. (*See Rule* 55, *however, as regards Colonial Excess Profits Duty.*)

A deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any Excess Profits Duty or similar duty imposed in any country outside the United Kingdom. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 4.)

This rule would follow from the Income Tax case of *Stevens* v. *Durban-Roodepoort Gold Mining Co., Ltd.*, 1909 (25 T.L.R. 316), in which it was decided that Colonial and foreign taxation should be regarded as an admissible trading expense. It will therefore be charged in each year's accounts precisely as any other expense.

55. Excess Profits Duty: effect of Excess Profits Duty in British Possession.

55. The Commissioners of Inland Revenue may make arrangements with the Government of any British Possession or Protectorate in which an Excess Profits Duty is chargeable, so that a concern shall pay only the amount of one of the duties in question (i.e., the home or colonial), whichever is larger.

Relief in respect of Colonial Excess Profits Duty may not be claimed under both Rule 54 and Rule 55, but a concern may adopt whichever Rule is most advantageous.

His Majesty may by Order in Council declare—

(a) *that under the law in force in any of His Majesty's possessions Excess Profits Duty is chargeable in respect of any profits in respect of which Excess Profits Duty is also payable in the United Kingdom; and*

(b) *that arrangements have been made with the Government of any such possession whereby, in respect of any profits, only the duty which is higher in amount is to be payable, and the amount of such duty is to be apportioned between the respective Exchequers in proportion to the amount of duty which would otherwise have been payable in the United Kingdom and in that possession respectively.* (*Finance Act,* 1917, *s.* 23 (1).)

Where any such Order in Council is made, then if the Commissioners are satisfied that any case is one to which any such arrangements relate, they may, in lieu of any relief granted under Rule 4 *of Part I of the Fourth Schedule to the principal Act, allow or make such remission or adjustments of duty as may be necessary to give effect to such arrangements, so, however, that the effect of such*

55. Excess Profits Duty: effect of Excess Profits Duty in British Possession.—(*contd.*)

remission or adjustment shall not be less favourable than the relief in lieu of which they are allowed or made. (*Finance Act,* 1917, s. 23 (2).)

The obligation as to secrecy imposed by subsection (8) *of section forty-five of the principal Act shall not prevent the disclosure to the Government of the possession concerned of such facts as may be necessary to enable such arrangements as aforesaid to be carried into effect.* (*Finance Act,* 1917, *s.* 23 (3).)

Section twenty-three of the Finance Act, 1917 (*which provides for relief in respect of Colonial Excess Profits Duty*), *shall have effect, and shall be deemed always to have had effect, as though references to His Majesty's possessions included references to any territory under His Majesty's protection.* (*Finance Act,* 1919, *s.* 34.)

The operation of this section is retrospective in theory, but as the imposition of Colonial Excess Profits Duties is of recent date the relief will not have occasion to operate very far back.

The general application of the section is as follows—

	£
United Kingdom Duty . . .	£10,000
Colonial Duty	5,000
	£15,000

Duty payable . . £10,000

Apportioned—	£
⅔ to United Kingdom Exchequer . .	6,667
⅓ to Colonial Exchequer . . .	3,333

(£10,000 = ⅔ of £15,000)

55. Excess Profits Duty: effect of Excess Profits Duty in British Possession.—(contd.)

The exact *method* of payment and apportionment is to be arranged between the respective Governments and on this account the obligations to secrecy (Rule 118) are abrogated so far as is necessary.

Where the whole of the profits of a concern are subject to review, for Excess Profits Duty purposes, both in the United Kingdom and in a British possession, the calculation of the relief due will be a simple matter. But cases will frequently arise such as the following—

	£
(*a*) Company's total income as in its accounts	35,000
(*b*) Company's total income for U.K. Excess Profits Duty purposes .	40,000
(*c*) Company's Colonial income as in its accounts	10,000
(*d*) Company's Colonial income for Colonial Excess Profits Duty purposes	11,000
(*e*) Company's Colonial income as it would (if necessary) be computed for U.K. Excess Profits Duty purposes	12,000
(*f*) United Kingdom duty . .	8,000
Colonial duty	3,000

In this case the total duty due will *not* be £8,000 merely. It is evident that about one quarter, roughly speaking, of the £8,000 duty is in respect of the profits on which the £3,000 is levied. The remaining three-quarters must be left with £6,000 duty (¾ of £8,000). The quarter had to bear £2,000

55. Excess Profits Duty: effect of Excess Profits Duty in British Possession.—(*contd.*)

duty in the United Kingdom and £3,000 duty in the Colony, but only the larger is payable, *i.e.*, £3,000. The total duty (U.K. and Colonial) due is, therefore, somewhere about £9,000.

But this is on the rough proportion of one-fourth. Should the actual proportion be $\frac{10,000}{35,000}$ or $\frac{11,000}{40,000}$ or $\frac{12,000}{40,000}$? None of the proportions referred to can be taken, because the respective pre-war profits are unlikely to be in any such proportion. Probably, the Colonial income will have to be separately reviewed for United Kingdom Excess Profits Duty purposes, and the Colonial duty compared with what would have been the United Kingdom duty on such income. But at this point we are compelled to leave the matter, as no arrangement has yet been made with any Dominion.

CHAPTER IX

The Computation of Profits: Long Contracts and Matters in Suspense

LONG CONTRACTS—SUSPENDED CONTRACTS—DOUBTFUL DEBTS—ENEMY DEBTS, CONTRACTS, ETC.

56. Long contracts.

56. The profits of a contract which extends over more than one accounting period must (unless, owing to special circumstances, the Commissioners of Inland Revenue otherwise direct) be properly apportioned over each period.

In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period, there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was performed in such periods. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 11.)

This Rule is a particular application of Rule 41.

Its effect is really to lay down a book-keeping method for Excess Profits Duty purposes, the method being the apportionment of the profits (or

56. Long contracts.—(*contd.*)

losses) on long contracts according to the work performed in each pre-war or during-war period.

To what extent *is* a contract performed in any period? The extent of performance might be measured by the contractor's expenditure, or on the estimated profit attaching to the particular expenditure. Thus, if the contract price is £100,000 and the total expenditure proves to be £80,000 over four years, the latter might be found to have been expended as follows—

1912 . . £10,000, *i.e.*, $\frac{1}{8}$ of whole expense
1913 . . £20,000, ,, $\frac{2}{3}$,, ,,
1914 . . £30,000, ,, $\frac{3}{8}$,, ,,
1915 . . £20,000, ,, $\frac{2}{8}$,, ,,

The profit might be apportioned as follows—

1912 . . . $\frac{1}{8}$ of £20,000 profit = £2,500
1913 . . . $\frac{2}{8}$,, ,, = £5,000
1914 . . . $\frac{3}{8}$,, ,, = £7,500
1915 . . . $\frac{2}{8}$,, ,, = £5,000

Or, it might be said that the work fell into two clearly marked stages, the first stage occupying 1912 and 1913, and the second stage occupying 1914 and 1915. In this case the company might attempt to show that the contract price had been made up four-tenths for the first stage and six-tenths for the second stage, *i.e.*—

	Contract Price.	*Expenditure.*	*Profit.*
1912 1913	£40,000	£30,000	£10,000
1914 1915	£60,000	£50,000	£10,000

Even so, questions might arise as regards the apportionment of the first £10,000 between 1912 and 1913, and of the second £10,000 between 1914 and 1915.

56. Long contracts.—(*contd.*)

The Act gives no direction as to the proper method of ascertaining the true apportionment, beyond its reference to the "extent to which the contract was performed in such periods." It is probable, but not certain, that this requires the profit on the whole contract to be apportioned according to the *quantum* of work performed in each period. This must sometimes be measured in terms of outlay, no other method presenting itself in many cases. But in the case, say, of the construction of a railway line, it might be contended that the total profit should be apportioned according to mileage. Increased cost during the war might make this clearly inequitable, in which case the Commissioners of Inland Revenue would doubtless in the "special circumstances, otherwise direct."

57. Certain losses on contracts suspended owing to the war may be allowed against the profits of Accounting periods reviewed for Excess Profits Duty purposes.

57. Suspended contracts.

There is no specific legal sanction for this rule, which follows from the general principles of the tax. The following comments are of interest.

On 30th September, 1915, Sir A. Henderson called attention to the case of contracts on old prices having been set aside in favour of more

57. Suspended contracts.—(*contd.*)

profitable contracts (war orders, etc.) on the new prices. He said that in charging tax on the profit of the remunerative contract, allowance should be made in respect of the very large loss which must inevitably result when the old obligations are taken up.

Mr. McKenna promised that allowance would be made.

On 4th November, 1915, Sir A. Henderson referred to a case "of a concern that has been doing work on Government account and has set aside all its old orders, which must result in enormous loss in connection with those older orders at a later date."

Mr. McKenna said: "It is provided for in Clause 34,[1] Subsection (3)."

Later, Mr. McKenna said: "In the normal course, contracts in course of execution, which have already been begun and put on one side, would be valued in the accounts. Therefore a set-off for any loss by the taxpayer on account of the suspension of the contract will come into account without any special provision. So far as a contract is completed after the war which has been postponed because of the war, and where, for instance, the cost of materials has increased owing to the war, I suggest that that case is met by Section 34, Subsection (3), because the loss which occurs during the lifetime of the tax will be set off against any profit on which the tax has been paid this year."

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[1] Clause 34 (3) became Section 38 (3), page 29, but its application is not evident where the loss is incurred after the cessation of the Excess Profits Duty.

57. Suspended contracts.—(*contd.*)

It should be observed—

(1) that the loss must be an actual loss. Where, as is usual, relief can be obtained, as regards the old contracts, by action in the Courts or under legal sanction, no question of loss can arise:

(2) that the loss must be ascertainable. A loss on a contract performed during the Accounting Period will be charged in the accounts automatically, but not a possible loss on the future performance of a contract:

(3) that nevertheless in a clear case, the Revenue is likely to accept a reasonable estimate of future loss, subject to adjustment when the contract is performed or disposed of:

(4) that where, under (3), Excess Profits Duty may be tentatively reduced by reference to prospective loss, such loss may be charged in the accounts for the periods in which it may be considered to have been sustained; but this is likely to be a complicated matter of accountancy, thus—

(*a*) where the contract is due to be performed by a stated time, a penalty being prescribed for each day, or month, etc., passing after that date without performance, no loss is incurred until the penalty begins to accrue (just as, on the contrary, no contractor would take credit for a profit on a contract before the contract was commenced);

57. Suspended contracts.—(contd.)

(*b*) where it has been agreed that the contract shall be performed at a future date, but at a price which is certain to entail a loss, it may be contended that the loss is incurred by reason of non-performance during the war; this contention is no doubt sound in a number of cases, for the prospective loss should be shown in the contractor's Balance Sheet during the war; where, as in the case of Excess Profits Duty, it is necessary to apportion the loss closely, there is something to be said for making the apportionment over the periods during which the contract should have run.

58. Doubtful debts.

58. Doubtful debts may be valued, and any prospective loss written off; but the matter must be very clear and any writing off will be liable to subsequent revision.

This is an application of Income Tax law and practice under Rule 39. The relevant Income Tax enactments are as follows—

> "In ascertaining, estimating, or assessing the profits of any person chargeable under Schedule (D) of this Act, either upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing to such person; and in the case of the bankruptcy or insolvency of the debtor, the amount of the dividend which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof, and the duty chargeable under the said Schedule shall be assessed and charged upon the estimated value of all such doubtful debts accordingly."—(*Income Tax Act*, 1853, *s.* 50.)

The practice is not to make a general allowance on a percentage basis or otherwise, even though a proportion of the outstanding debts can be shown

58. Doubtful debts.—(*contd.*)

by the previous history of the concern to be certain to entail a loss. But specific doubtful debts may be valued.

For Excess Profits Duty purposes, the date of the writing off is important. In this connection, the usual practice of the business should be adhered to (*i.e.*, the particular account should be written down when circumstances warrant it). The Revenue will probably safeguard itself by assessing to cover and postponing application for part of the Duty. In the case of debts of any size, care should be taken that any subsequent recovery of sums written off should be brought into the Excess Profits Duty computation for the period in which the writing off took place. See also Rule 95.

59. Enemy debts, contracts, etc.

59. Matters in suspense by reason of their connection with late enemy countries, must be left open until efficient arrangements enable them to be settled.

It is still impossible for the final result of many matters to be foreseen, and the Revenue is still willing to postpone application for such part of the Duty as refers thereto.

CHAPTER X

The Computation of Profits: Wear and Tear, Obsolescence, Postponed Renewals, etc.

WEAR AND TEAR AND RENEWALS—APPLICATION TO REFEREES—BUILDINGS—OBSOLESCENCE—RENEWALS POSTPONED—EXCEPTIONAL DEPRECIATION OR OBSOLESCENCE — WAR PLANT — OTHER SPECIAL CIRCUMSTANCES—PATENTS.

60. Depreciation and Renewals.

60. Deductions for wear and tear, or for expenditure of a capital nature for renewals, may be allowed only so far as the Income Tax Acts would permit, and then only if the Commissioners of Inland Revenue consider such deductions to be properly attributable to the period in question.

Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonably and properly attributable to the year or accounting period. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 3.)

There are four questions here requiring comment—

(*a*) What is wear and tear?

(*b*) What is renewal expenditure of a capital nature?

60. Depreciation and Renewals.—(contd.)

(*c*) What do the Income Tax Acts allow ?

(*d*) What is properly attributable to the period in question ?

In considering Questions (*a*) and (*b*), the last clause of Rule 39 should be remembered. The words of the enactment under consideration would be too vague but for that direction. As it is, we are sent to the Income Tax Acts for interpretation.

Wear and tear is "physical deterioration" (*Burnley Steamship Co.* v. *Aikin*, 1894, 21 Sc. L.R. 803). The assets in question need not have suffered loss of earning power by reason of such deterioration, but they must have suffered loss in value (*London County Council* v. *Edwards*, 1909, 25 T.L.R. 319). On the other hand, the loss in value must have arisen because of the physical deterioration referred to. Loss in value on account of newer types coming into the market or for other general causes may not be considered.

The term "*expenditure of a capital nature for renewals*" makes one seek for enlightenment in the Income Tax Acts. We here discover a reference to renewal expenditure which is *not* of a capital nature. It is found in the Income Tax Act, 1842 (Sec. 100), Schedule D, Case I, Rule 3—

"In estimating the balance of profits and gains . . . no sum shall be set against such profits or gains on account of any sum expended for . . . the supply . . of any implements, utensils or articles employed for the purpose of such trade . . . beyond the sum usually expended for such

60. Depreciation and Renewals.—(*contd.*)

purposes according to an average of three years preceding."

This means that a deduction may be made for the supply of implements, etc., up to the average expenditure of the three years which come into the average for Income Tax purposes (*Dictum* in *Usher's Wiltshire Brewery, Ltd.*, v. *Bruce*, 1914 [1915], A.C. 433). For Excess Profits Duty purposes, the reference to the average drops out (Rule 41), and we find that the *renewal of implements, utensils, and the like* is allowable as a direct charge against profits, not being expenditure of a capital nature according to the Income Tax Acts.

Renewals which *are* of a capital nature are treated differently, as shown in Rule 60. These have reference to matters which are too considerable to be classed with implements and utensils. The reader will realize instinctively that a pickaxe is an implement, but that a steam-engine is something more. Similarly, buildings, tram-cars, railway lines, and electric accumulators are examples of matters quite outside the scope of the Income Tax Act enactment referred to above. To renew these matters is to incur an expenditure which has for its object the maintenance of capital. Such expenditure may not ordinarily be charged against profits.

The allowance made for the depreciation and renewal of capital matters is governed by a provision of the Customs and Inland Revenue Act, 1878, which is set out in the Appendix (p. 464). Its effect is as follows: *First*, it is confined to

80. Depreciation and Renewals.—(contd.)

"machinery and plant." No allowance is made for the depreciation or renewal of a lease, the depreciation or rebuilding of a building,[1] the exhaustion of a coal mine or nitrate ground, etc. "Machinery and plant" has never been defined exactly, but the examples given will show the reader that his own business experience should be a sufficient guide to him in this connection. *Secondly*, the direct cost of the renewal of machinery and plant is to be capitalized. It may not be charged against the profits of the year in which the renewal occurred. *Thirdly*, the allowance made is to be the amount which represents the diminished value by reason of wear and tear. The intention of the Act is that the probable life of the plant concerned shall be taken and its cost spread over that period. At the end thereof the accumulated allowance should just suffice to meet the cost of renewal (*Leith, Hull, and Hamburg Steam Packet Co.* v. *Musgrave*, 1899, 36 Sc. L.R. 745). It is the practice to adopt a percentage basis for the allowance, but in some cases the actual cost of renewals, as and when incurred, is taken to be the allowance which most fittingly meets the charge for depreciation. The latter method is particularly appropriate when the renewal is perpetually occurring (*e.g.*, in the case of a system of piping).

The allowance of a *sum properly attributable to the period in question* is an important matter when a temporary tax is concerned, and a tax, moreover, which is based on the comparison of one period

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[1] *i.e.*, as depreciation: see Rule 62, however.

60. Depreciation and Renewals.—(*contd.*)

with another. When the actual cost of renewals is allowed, the restriction is particularly in point. Thus, the normal cost in a particular case might average £1,000 per annum, or £3,000 in the three years (1912, 1913, and 1914). For Income Tax purposes, it matters very little in what proportion the £3,000 falls into the three years. But when the duty depends on the excess of the 1914 profit over the average profits of 1912 and 1913, an equitable apportionment is essential: £500 (1912), £500 (1913), and £2,000 (1914) would be as injurious to the Revenue as £2,000 (1912), £500 (1913), and £500 (1914) might be to the taxpayer. In a further case, also, an adjustment might be necessary, *i.e.*, where plant is of a nature requiring frequent renewal and the allowance is made on the written down value. Thus—

1912.	Value	£10,000
	Depreciation @ 15%	1,500
1913.	Value	8,500
	Depreciation	1,275
1914.	Value	7,225
	Depreciation	1,084
1915.	Value	6,141
	Additions, 1914	5,000
		11,141
	Depreciation	1,671

Here we find the depreciation allowance varying between £1,671 and £1,084. This variation is only partly corrected by the adjustment made

60. Depreciation and Renewals.—(contd.)

on account of the varying capital (Rule 98). It might well be that for purposes of comparison all years should be substantially equalized in this respect. Of course, to make a difference of any moment, the plant would have to be of considerable value and be subject to an unusually heavy rate of depreciation.

The meaning of the enactment on which Rule 60 is based has been explained by Mr. McKenna (when Chancellor of the Exchequer) as follows—

"Take the case of an asset which is renewed occasionally—I have put it at once in twenty years—the whole cost of which is charged to the year. I would suggest that, for the purpose of giving us the datum line,[1] it is hardly fair. It works out perfectly equally over a long period of time for the purposes of the Income Tax, because that which is lost in one year is gained in another year; but when we are dealing with Excess Profits where the amount you have to pay depends upon the datum line, it is absolutely essential that special charges for wear and tear falling for the datum-line period should be, as it were, averaged. The same is true during the accounting period. These words are introduced in order to prevent anomalies. I do not think the Committee would be well advised if they accepted their excision. On the whole, I should say that the existence of these words is probably more favourable to the taxpayer than to the revenue; but undoubtedly, to whomsoever the words may be favourable, they have the effect of

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[1] The Standard of Profit.

60. Depreciation and Renewals.—(*contd.*)

averaging as between the taxpayer and the revenue the advantage and the loss."

We set out extracts from Memoranda issued by the Board of Inland Revenue at various times—

Legal position.

> " The existing law authorizes a deduction, in assessing the profits of any trade, manufacture, or concern in the nature of trade, chargeable under Schedule D or by reference to the rules of that Schedule, of such an amount as the Income Tax Commissioners concerned 'may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern.' This deduction is in addition to the allowance made in respect of the cost of *repairs* to the machinery or plant.
>
> " There is no statutory limit to the amount the Commissioners may allow in any year, but the aggregate amount of the deductions must not exceed the actual cost of the machinery and plant to the person by whom the concern is carried on."—(*Official Memorandum.*)

Rates fixed by agreement in certain trades.

> " Although no fixed scale of allowance is prescribed by law, definite rates of depreciation on different classes of machinery have been agreed upon in a number of important industries as the result of applications by representatives of the industries to the Board of Inland Revenue.

These allowances, whilst subject to the concurrence of the respective bodies of Income Tax Commissioners, are accepted by the taxpayers and are generally adopted."—(*Official Memorandum.*)

80. Depreciation and Renewals.—(*contd.*)

A Schedule of Rates fixed by agreement is printed in this book as Appendix II.

Wear and Tear allowance.

"Where for any special reason it is claimed that the allowance for wear and tear of machinery and plant should, for Excess Profits Duty, exceed that allowed for Income Tax, application should be made in the first instance to the Inspector of Taxes dealing with the Excess Profits Duty assessment. An appeal on the question may be made either to the District Commissioners of Taxes or to the Special Commissioners."—(*Official Memorandum.*)

Wear and Tear allowance immaterial in certain circumstances.

"Generally speaking, the ordinary allowance for wear and tear in the case of Excess Profits Duty, is of comparatively small importance in so far as it relates to plant and machinery which may be the subject of an allowance for special depreciation owing to the war, as explained above.[1] In such cases, the difference between war value and post-war value necessarily includes the ordinary allowance for wear and tear."—(*Official Memorandum.*)

[1] Page 219 of this book.

61. Application to Referees.—(*contd.*)

61. The Finance Act, 1918, permits application to the Referees by a number of persons who are dissatisfied with the amount of any Income Tax deduction for wear and tear.

It is thought advisable to refer to this matter, as the effect of the new law on Excess Profits Duty computations will doubtless be the subject of inquiry on the part of taxpayers. In this case, Excess Profits Duty complexities may be involved.

So far as normal wear and tear is concerned, any increase in the rate of allowance will entail the operation of Rule 21. That is to say, the deduction for the Standard Period must be re-worked on the new basis. If the value of the machinery affected has varied much, Rule 61 might easily affect current Excess Profits Duty liability, as it is certain to where a Percentage Standard applies.

So far as exceptional wear and tear is concerned, " as a consequence of the war," Rule 65 will apply.

The section on which Rule 61 is founded is printed on page 465.

62. Depreciation of buildings.

62. The allowance made, as from 1918, in respect of the depreciation of certain buildings does not vary the Excess Profits Duty charge.

This rule is inserted for the same reason as that which causes the insertion of Rule 61, but Excess Profits Duty is not affected.

The new law in question allows the full annual value (and not five-sixths thereof as heretofore) of " mills, factories, or other similar premises " to be deducted in trading accounts for purposes of the assessment of trade profits under Schedule D. Tax is paid on five-sixths of the value under Schedule A, and the trader therefore has an income, not subject to Income Tax, equal to one-sixth of the annual value. This allowance is intended to cover the depreciation of buildings. This new law applies only to trade premises occupied by the owner.

62. Depreciation of buildings.—(*contd.*)

For Excess Profits Duty purposes, Rule 43 operates. This requires the computation of profit for the said purposes to be made without deductions in respect of trade premises owned by the trader.

63. Obsolescence.

63. When obsolete plant or machinery is scrapped and replaced, an allowance is made equal to that part of the original cost which is not covered by depreciation allowances made for Income Tax purposes and by the scrap value.

The following (indented) notes were issued by the Board of Inland Revenue before the enactment of the section of the Finance Act, 1918, referred to later.

Obsolescence.

> " In addition to the allowance for wear and tear of plant and machinery, there has been in operation since 1897 an allowance for *obsolescence.*
>
> " The necessity for this allowance arises from the fact that machinery has frequently to be replaced, before it is worn out, owing to its having become obsolete and incapable of competing with more up-to-date machinery.

63. Obsolescence.—(contd.)

"Accordingly, where new and improved machinery is introduced in place of machinery not wholly worn out, the Board of Inland Revenue agree to the allowance, as a deduction from the profits of the year, of so much of the cost of replacement as is equivalent to the written-down value of the machinery replaced less any sum realized by the sale of it—the balance of the cost of the new machinery being treated as an addition to the capital of the business."

"Where pre-war machinery or plant has become obsolete from causes not actually relating to the war but arising during the war, and is then replaced, an allowance for the difference between the written-down value and the scrap value is admissible; and where the replacement is not effected during the war,[1] but shortly after, a like allowance may be claimed under Section 40 (3) of the Finance (No. 2) Act, 1915."—(*Official Memorandum.*)

The allowance is now legalized as follows—

In estimating the profits or gains of any trade, manufacture, adventure or concern in the nature of trade chargeable under Schedule D, or the profits of any concern chargeable by reference to the rules of that Schedule, there shall be allowed to be deducted as expenses incurred in any year so much of any amount expended in that year in replacing any plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery

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[1] Rule 64.

replaced after deducting from that cost the total amount of any allowances which have at any time been made in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery and any sum realized by the sale of that machinery or plant. (*Finance Act*, 1918, *s.* 24 (3).)

63. Obsolescence.—(*contd.*)

As regards Excess Profits Duty, it may not be taken for granted that the allowance for obsolescence will always be made for the Accounting Period in which the scrapping takes place. The Revenue is likely to contend in many cases that the obsolescence has been gradual, and that the allowance should be spread backwards over several years. This is a question of fact—over what period the old machine became obsolete.

64. Postponed renewals or repairs.

64. Where, as a consequence of the war, the execution of renewals or repairs is postponed in any case, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees.

The enactment is set out after Rule 67.

In the course of the debate on the Finance (No. 2) Act, 1915, Mr. Montagu (the *Financial Secretary to the Treasury*) said—

" The Board of Inland Revenue and the Referees, I think the hon. Member will admit, ought to have the power to take evidence of proof that the postponement is really a postponement owing to the

64. Postponed renewals or repairs.—(*contd.*)

war, and not a definite and permanent abandonment of these renewals and repairs which may have occurred because the owner of the business or trade or ship had come to the conclusion that they were unnecessary. It ought to be a temporary postponement, purely due to the war."

(See also notes after Rule 67.)

The following note (indented) has been issued by the Board of Inland Revenue.

> *Deferred renewals and repairs.*
>
> "As regards the allowance authorized for the postponement or suspension, as a consequence of the war, of renewals or repairs, the amount admissible is usually capable of estimation and agreement when an Excess Profits Duty assessment is made. The taxpayer has the right of appeal to the Board of Referees appointed under Part III of the Finance (No. 2) Act, 1915, or—in the case of a 'Controlled' Firm—to the Board of Referees appointed under the Munitions of War Act, 1915."—(*Official Memorandum.*)

65. Exceptional depreciation or obsolescence.

65. Where, as a consequence of the war, there has been exceptional depreciation or obsolescence of assets employed in the business, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees.

The enactment is set out after Rule 67.

65. Exceptional depreciation or obsolescence.—(*contd.*)

The following notes (indented) have been issued by the Board of Inland Revenue from time to time.

Temporary variations necessitated by war conditions.

> "With the exception of the rates relating to Motor Omnibuses and Saw Milling machinery, the whole of the rates of depreciation given in the Schedule (*Appendix II*) were fixed *under pre-war conditions.*
>
> "Cases, however, have arisen, especially since the commencement of the war, in which machinery is suffering *exceptional wear and tear* owing, for example, to extra hours of running, the difficulty of obtaining material for effecting repairs, the rougher usage to which the machinery is subjected owing to the employment of unskilled labour, and the fewer opportunities available for having the machinery overhauled.
>
> "In such cases, applications for special rates of depreciation are entertained; but, generally speaking, the circumstances of individual cases are found to vary so widely as to render it impracticable to fix a uniform scale, and each application is dealt with on its own merits."—(*Official Memorandum.*)

The measure of special depreciation and obsolescence allowances.

> "These allowances extend to any material assets employed in a business and not merely to machinery and plant. Where these assets have been constructed or acquired during the war at

65. Exceptional depreciation or obsolescence.—(*contd.*)

an inflated price and will sink to a lower level of value, or even to scrap value, at the end of the war, full relief can be claimed. The measure of the allowance to be made in respect to such assets will be the difference between cost and post-war value. An allowance of the like nature is, of course, applicable also to assets in use before the war, the value of which has fallen owing to war causes. The measure of the allowances in such cases is the difference between the value of the assets (depreciated or written down for wear and tear) at the date when liability to Excess Profits Duty began and their post-war value."—(*Official Memorandum.*)

Determination of special depreciation allowances.

" Inasmuch as post-war value and the duration of the war are unknown, the Board of Inland Revenue have been unable in most cases to make final allowances of the foregoing character, but where the necessary evidence is furnished that depreciation is taking place or is inevitable at the end of the war, they are ready to make provisional allowances subject to subsequent correction."—(*Official Memorandum.*)

Period over which special depreciation allowances fall to be granted.

" As a general rule these allowances, whether provisional or final, will be ' spread,' *i.e.*, granted by instalments in successive accounting periods

65. Exceptional depreciation or obsolescence.—(contd.)

during the lifetime of the Duty: but in exceptional cases where new assets are being regularly acquired during successive accounting periods, and the taxpayer desires that the allowance (whether provisional or final) for each asset or group of assets should be wholly or mainly granted in the accounting period in which the asset is acquired, the Board will not object to that course being taken."—(*Official Memorandum.*)

Depreciation of pre-war buildings.

"Special depreciation of pre-war buildings due to the war may be allowed for under Section 40 (3). Normal depreciation taking place equally in the past and in the present, if allowed, would not, in most cases, affect the liability to Excess Profits Duty."—(*Official Memorandum.*)

Special purchases of machines, etc.

"It will happen from time to time that a manufacturer will purchase machines, etc., for the purpose of specific contracts, and will wish, from motives of prudence, to write down the value of the machines to a low figure out of the profits of the contracts. In cases in which purchases of this character have regularly occurred, both in the past and in the present, the non-allowance of a special depreciation beyond the ordinary wear and tear allowance would not normally affect the liability to Excess Profits Duty. Where, on the other hand, purchases of this kind take place only during war periods,

65. Exceptional depreciation or obsolescence.—(contd.)

they would usually be attributable to war conditions, in which event a special allowance can be claimed under Section 40 (3) of the Finance (No. 2) Act, 1915."—(*Official Memorandum.*)

See also notes after Rule 67.

The following comments in Parliament are of interest.

Mr. Montagu (*Financial Secretary to the Treasury*), in the Debate on the Finance (No. 2) Act, 1915—

" The Committee is now pressing on the Government a deduction in the Excess Profits tax for wasting assets. We have agreed to give that, and we think we have done so in Subsection 3 of Clause 36.[1] This paragraph deals with wear and tear . . . we want to make sure that the cost of machines likely to be useless at the end of the war shall be met under the word 'obsolescence,' and I will do anything to make that point clear."

Mr. McKenna instanced a case in which a firm which had been making needles stopped that business in order to make gun sights : " That firm in the course of two years has lost the whole of its outside trade ; and after the war, when it goes back to making needles, it may have to begin again with practically no goodwill. I am perfectly prepared to allow right off for such loss of goodwill as is shown to have been effected after the war."

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[1] Now Section 40.

66. Where it has been necessary, in connection with the war, to provide plant which will not be wanted for the purposes of the business after the termination of the war, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees.

66. Plant provided and of use only for war purposes.

The enactment is set out after Rule 67.

(See also notes after Rule 67.)

In the course of the Debate on the Finance Bill, 1916, under which Excess Profits Duty was first levied on concerns which were subject to Munitions Levy for the same period, Mr. McKenna replied to the criticism of a Member as follows—

" . . . He brought to the notice of the House, cases in which controlled firms have erected new buildings and put up new plant, and introduced new capital into their business, with the object of increasing their output. He said that in some of these cases an arrangement had been entered into with the Minister of Munitions that the depreciation of this plant, these buildings, and this new capital should be at such a rate as would reduce the value of the capital in the books of the company after the war to the post-war value. I hope I make the point clear. I go much further than that. The arrangement, he says, has been made in some cases. I am prepared to accept that in every case, and for the determination of Excess Profits Duty I am perfectly prepared, and I publicly

66. Plant provided and of use only for war purposes.—(*contd.*)

stated it, to accept the rules of the Munitions Act, and to agree that the allowance for depreciation in those cases should be in accordance with the Munitions Act rules, and not in accordance with the rules for Excess Profits Duty."

Mr. McKenna also said—

" Where new capital is put into works for the production of munitions, the Ministry of Munitions will be the authority to determine the rate at which capital is to be written down in order to bring it to the value at which it will stand at post-war rates. . . . Where £50,000 have been put into a business in the shape of new plant bought at the high prices of the war for a purpose which may be mainly useful in the war, and in view of the fact that that plant after the war, instead of being worth £50,000, may be only worth £10,000, it is quite obvious that the owner of the controlled establishment or firm must be compensated for that loss of capital."

The Board of Inland Revenue has issued the following note—

> *Controlled establishments.*
>
> " In one class of case, namely, concerns which are 'controlled' under the Munitions of War Act, 1915, the Income Tax allowance has been temporarily extended, by the Finance Acts of 1916 and 1917, to include the deductions for 'exceptional depreciation or obsolescence of buildings, plant or machinery' which are allowed

66. Plant provided and of use only for war purposes.—(*contd.*)

for Excess Profits Duty and Munitions Levy purposes.

"This allowance prevents the hardship that would otherwise arise owing to the circumstance that 'controlled establishments,' being held at the disposal of the Government, may be required to alter completely the course of their business and to undertake exceptional expenditure which may be of little or no post-war utility to them. The Finance Acts of 1916 and 1917 accordingly authorize the Commissioners to revise the Income Tax allowance so as to enable a deduction to be made from profits of the difference between cost and post-war value of installations and extensions (including buildings) which would not have been undertaken but for the war and the express requirements of the Government."—(*Official Memorandum.*)

See Rule 142, as regards the Referees who deal with Controlled Concerns under Rules 64 to 67.

67. Treasury Regulations: Patents.

67. The Treasury may make regulations specifying other special circumstances (*of a similar kind*[1]) in which a taxpayer may apply to the Board of Inland Revenue for a modification of the rules governing the computation of Excess Profits Duty. Appeal from the Board's decision may be made to a Board of Referees.

The following Regulation has been made under this rule—

DEPRECIATION OF PATENT RIGHTS

"The Commissioners of Inland Revenue shall in

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[1] The *ejusdem generis* rule.

67. Treasury Regulations: Patents. —(*contd.*)

addition to the powers conferred upon them by Section 40 (3) of the Finance (No. 2) Act, 1915, have power in any case to allow modification of the provisions of the Fourth Schedule to the above named Act owing to depreciation through effluxion of time of any capital which is employed in the trade or business and which is expended upon and consists of patent rights, so far as such depreciation is not offset by goodwill arising from the user of, or interest in, such rights.

" This Regulation shall have effect as from the commencement of the above named Act."

(See also the final paragraph under Rule 69.)

Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership,[1] *or to the postponement or suspension, as a consequence of the present war, of renewals or repairs,*[2] *or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war,*[3] *or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war,*[4] *or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that schedule as they think necessary in order to meet the particular case.*

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissatisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees,

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[1] Rule 37. [2] Rule 64. [3] Rule 65. [4] Rule 66.

67. Treasury Regulations: Patents.—(contd.)

to be appointed for the purposes of this part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have. (*Finance* (*No.* 2) *Act,* 1915, *s.* 40 (3).)

64-67. Notes.

Notes on Rules 64 *to* 67.—These rules show that a particular relief may be obtained in four cases. Rule 37 adds a fifth case to these. The relief is the same, and is referred to in the Act as a modification of " any provisions of the Fourth Schedule " of the Act. It is proposed to summarize the provisions of that schedule in this place, and then to deal with Rules 64 to 67 individually. In that separate treatment, the particular rules which might require modification will be indicated. It may be observed, however, that, as well as the specified circumstances existing, it must " appear to the Commissioners of Inland Revenue," or to the Referees on appeal, that any of the said provisions " should be modified " in the particular case. The modification will be as the Commissioners (or Referees) " think necessary in order to meet the particular case."

Referees.—See Rule 134 as regards " controlled " concerns.

Summary of Fourth Schedule of Finance (No. 2) Act, 1915.

Part I—

1.—Rule 41. Computation to be on actual and not average profits.

2.—Rule 42. Only the proprietor's profits to be

84-87. Notes. —(*contd.*)

regarded. Rule 43. Lands and buildings owned and used in the business to be included.

3.—Rule 45. Development and other expense to be restricted under Income Tax Rules and apportioned to appropriate period. Rule 60. Wear and tear and renewal expense to be similarly restricted and apportioned.

4.—Rule 51. Income Tax and Excess Profits Duty paid not chargeable as trading expenses. Rule 54. Colonial and foreign taxes may be charged.

5.—Rule 48. Remuneration of officials restricted. Rule 46. Artificial transactions prohibited.

6.—Rule 8. Company holding all the shares of a similar company—the latter regarded as a branch of the former.

7.—Rule 58. Percentage standard adopted and profits applied in extinction of previous losses—allowance made.

8.—Rule 44. Income from investments excluded. Rule 88. Special rules for Life Assurance Companies and Investment Companies.

9.—Rule 89. Special rules for Local Authorities.

10.—Rule 90. Special rules for Industrial and Provident Societies.

11.—Rule 56. The apportionment of the profits of long contracts.

Part II—

1.—Rule 21. Rules for computing profits to be the same for pre-war years as for accounting period.

2.—Rule 3. Where the accounting period is

64-67. Notes.—(*contd.*)

shorter than a year, the pre-war standard to be proportionately diminished.

3.—Rule 22. Extension of basis for profits standard where the trade of the three last pre-war trade years was abnormally depressed, etc.

4.—Rules 32 to 36. The computation of the pre-war standard where there have not been three pre-war trade years.

5.—Rule 37. A change of ownership may, or may not, constitute the setting up of a new business.

6.—Rule 47. Regulations as to the exchange of the assets to manage which the concern exists.

Part III—

1.—Rule 92. " Capital " includes money used in the business. Rule 93. Assets acquired by purchase to be valued as price paid less depreciation. Rule 94. Assets not acquired by purchase to be valued at their worth when acquired less depreciation. Rule 95. Debts owing to the concern to be taken at their nominal value less allowances made for Income Tax purposes.

2.—Rule 91. " Capital " is not to include assets the income from which is ignored in the computation of profits.

3.—Rule 93. Assets purchased otherwise than for cash to be taken to have cost the sum which the consideration given therefor was worth. Rule 97. The goodwill of a private company whose shares are mainly held by the previous proprietor may not ordinarily be regarded as part of the capital.

64-67. Notes.—(*contd.*)

Note on Rule 64.—Modification might be required in certain of the following regulations contained in the schedule summarized above.

Part I, 1. The Income Tax Acts prohibit the deduction of any charge for repairs not actually executed. Rule 64 provides for such an allowance, however. Renewals may also be allowed for although not executed.

Part I, 8. It is possible that the postponement of repairs or renewals might in some cases be allowed for, in part, by the admission of the amount of a renewals reserve fund into the estimation of capital, and of the income from the investment of such fund into the computation of profit. If such income were at a smaller percentage than the statutory percentage, an advantage would thereby arise to the taxpayer. But in this case the legal possibility is referred to rather than the practical probability.

Part II, 1. This rule is practically certain to be departed from in the circumstances referred to in Rule 64.

Part III, 1. A departure from Part I, 1, is likely to necessitate a special adjustment of the computation of capital, in regard to the assets concerned, not contemplated under Part III, 1.

Note on Rule 65.—Modification might be required as follows—

Part I, 1 ; *Part II,* 1 ; *and Part III,* 1. Similar considerations apply here as in the case of Rule 64.

Note on Rule 66.—Here also modifications of Part I, 1, Part II, 1, and Part III, 1, are to be

64-67. Notes. —(*contd.*)

expected. The depreciation rate would be higher than the rate allowed on machinery in use in pre-war years (which is a departure from Part II, 1). It seems also to be contemplated that allowance should be made in respect of assets not covered by the depreciation clauses of the Income Tax Acts.

CHAPTER XI

The Computation of Profits: the Valuation of Stock

GENERAL CONSIDERATIONS—GENERAL PRINCIPLE—GENERAL MODIFICATION AS REGARDS STOCKS AT END OF LAST ACCOUNTING PERIOD—SPECIFIC MODIFICATION AS REGARDS CLASSES OF INDUSTRIES VALUING BASE STOCKS AT FIXED PRICE—SPECIFIC MODIFICATION FOR INDIVIDUAL TRADERS VALUING BASE STOCKS AT FIXED PRICE.

THIS chapter has to do with the contents of an important White Paper issued by the Government in July, 1917, and subsequently issued as a Memorandum (in a slightly amended form) by the Board of Inland Revenue.

The Memorandum deals with four matters—

I. The general principle on which stock should be valued—Rule 68.

II. A general modification as regards the valuation of stocks appearing in the account at the end of the last Accounting Period—Rules 69 and 70.

III. A specific modification throughout the whole period of the Excess Profits Duty charge, in the case of industries which require base stocks of an imperishable character and in which a recognized practice has obtained of valuing a constant quantity at a fixed price—Rules 71 to 77.

IV. A special modification throughout the whole period of the Excess Profits Duty charge, in the case of a member of an industry not included in (3), or in the case of stock not included in (3), where a quantity of stock has nevertheless been taken at base price—Rule 78.

(For a list of industries admitted under Class III above, see Appendix III.)

Notes on these matters may be prefaced by comments on the repeated applications for the special treatment of stocks. It is contended that prices will fall after the end of the war, and that, meanwhile, Excess Profits Duty will have been paid even on the profit shown by the increased value, during the war, of the stock a trading concern must hold. The concessions contained in this chapter are not everywhere regarded as adequate. A typical proposal was made by Sir R. Barran, M.P., who moved the following new Clause to the Finance Bill, 1918—

" At the end of each and every accounting period the stock of a manufacturer in any trade or business then on hand shall be brought into the accounts for such period as to any quantity not exceeding that brought into account at the commencement of the first accounting period ending after the fourth day of August, nineteen hundred and fourteen, at the same prices as those at which the latter was so brought into account."

He said that there would be a very wide difference between the base price of stocks at the end of the war and shortly after.

Mr. Currie, M.P., commented : " The mover of the Clause appeared to take it for granted that when peace arrives the values of all stocks will fall. Very likely the values of some stocks will fall, but I do not think the conclusion that all will probably fall is really warranted, and I see no reason why the Chancellor of the Exchequer should give away his position on that point just now. If subsequently any fall takes place, then the matter can be reconsidered, but I do protest against its being taken for granted that the movement in stock values will only be in one direction."

Sir R. Barran: "Does the hon. Member doubt that raw material or semi-manufactured goods which are now standing at five or six times their original value are certain to fall within four or five years after the war?"

Mr. Currie: "I am not prepared to take it for granted that without exception all forms of trading stock will fall."

The Government did not accept the Clause.

I.—GENERAL PRINCIPLE ON WHICH STOCK SHOULD BE VALUED.

68. General principle.

68. The general principle is that stocks should be valued at cost price or market value, whichever is lower.

> "The Board of Inland Revenue are prepared to adopt the following modifications[1] of the *general principle* that stocks should be valued at cost price or market value, whichever is the lower."—(*Official Memorandum.*)

[1] Rules 69 to 78.

II.—GENERAL MODIFICATION : VALUATION OF STOCKS APPEARING IN ACCOUNT AT END OF LAST ACCOUNTING PERIOD.

69. Last Accounting Period valuation adjusted according to realizations.

69. The value attributed to stocks in the account at the end of the last Accounting Period, may be compared with the sums for which such stocks are realized within two years after the termination of the war.

Any deficiency in the latter may be deducted from the profits of the said last Accounting Period.

" A period of two years will be allowed after the termination of the war in which to ascertain by actual realization the value of the stock appearing in the account at the end of the last Accounting Period, and an allowance made from the profits of that period for any difference between the valuation and the sum realized.

" The loss (if any) on only such stocks as were in hand at the end of the last Accounting Period will be brought into the adjustment, but the whole of such stocks, not individual parcels selected by the taxpayer, must be considered.

" The necessary sanction for this modification of general principles will be given by a Regulation under Section 40 (Subsection 3) of the Finance (No. 2) Act, 1915."—(*Part I of Official Memorandum.*)

70. Whole stocks to be dealt with.

70. The whole of the stocks in hand at the end of the last Accounting Period, and no other stocks, must be dealt with together in making the adjustment under Rule 69.

(*See Part* 1 *of Memorandum after Rule* 69.)

Presumably any part of such stocks which is not

70. Whole stocks to be dealt with.—(*contd.*)

realized within the two years will be valued for purposes of comparison just as it was valued for the purposes of the account at the end of the last Accounting Period—*i.e.*, no adjustment can be obtained in respect of such part.

III.—SPECIFIC MODIFICATION: INDUSTRIES[1] WITH IMPERISHABLE STOCKS, OF WHICH A CONSTANT QUANTITY IS VALUED AT A FIXED PRICE.

71. Constant quantity valued at fixed price.

71. In certain cases (see Rules 72 to 77) a constant quantity of stocks may, for Excess Profits Duty purposes, be valued at a fixed price.

The following paragraphs of the *Official Memorandum* cover Rules 71 to 76—

"Certain classes of industry require to keep stocks of raw or semi-manufactured goods for the purposes of manufacturing processes, and these goods are frequently of such an imperishable character that a minimum quantity required for a business could be held untouched for a long period.

"Accordingly in any class of trade—

"(*a*) which requires for its manufacturing processes to keep such stocks; *and*

"(*b*) in which a recognized practice has obtained of taking a constant quantity at a constant price, the Board of Inland Revenue are prepared to recognize the practice.

"The Board of Inland Revenue would regard goods as imperishable which are of sufficient durability to last without material deterioration during a period equal to the length of the war.

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[1] Industries admitted to the concession—see Appendix III.

71. Constant quantity valued at fixed price.—(*contd.*)

"[1] Any individual member of the class who has not adopted the method in his business may be allowed to do so for the purposes of Excess Profits Duty, but may not claim as the constant quantity of stock so valued a greater quantity than the minimum amount held at any stocktaking in the three pre-war trade years.

"Where a claim is made that an industry should be brought within this concession, the Board of Inland Revenue are prepared to receive representations and to consider evidence as to the existence of a material body of such practice in the industry and as to the character of the stocks to which it is claimed the method should be applied, with a view to securing the uniform treatment of all members of the industry.

"[2] The balance of stock above the minimum quantity in cases falling under this modification of the general principle is to be treated as in (1) [3]."

(*From Part* 2 *of Official Memorandum.*)

The effect of this is that the increase in the value of such quantity of stocks during the war is ignored. Apart from these Rules, such increase would represent a profit.

The general operations of these Rules may be illustrated as shown on page 238.

The account is not exactly the kind likely to be met with in practice, but it reveals the matter in point.

Of the gross profit, £53,000, £23,000 is due to the increase in the value of raw materials in hand

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[1] Rule 75. [2] Rule 76. [3] Rule 69.

I. MANUFACTURING ACCOUNT

Raw Material valued at Cost or Market Value, whichever is lower.

1917		£	1917		£
Jan. 1.	To **Raw Material in Hand,** 5,000 *units*	20,000	Dec. 31.	By Sales of Manufactured Goods during year . . .	110,000
,, ,,	,, Manufactured Goods in hand .	40,000	,, ,,	,, **Raw Material in hand,** 6,000 *units* . . .	43,000
Dec. 31.	,, Purchases of Raw Material during year, 2,000 units .	25,000	,, ,,	,, Manufactured Goods in hand .	35,000
,, ,,	,, Manufacturing Expenses during year	50,000			
,, ,,	,, Balance, Gross Profit . .	53,000			
		£188,000			£188,000

II. MANUFACTURING ACCOUNT

Raw Material valued, as regards a Base Stock of 5,000 units at £2 a unit, and as regards any remaining Stock at Cost or Market Value, whichever is lower.

		Purchased.			£
		Date.	*Units*	*Cost per. Unit.*	
1917.					
Jan. 1.	To Raw Materials in hand 5,000 units at £2	1912	1,000	£2	10,000[1]
		1913	1,000	30/-	
		1914	1,000	70/-	
		1915	1,000	£5	
		1916	1,000	£8	
Dec. 31.	To Manufactured Goods in hand .				40,000
,, ,,	,, Purchases of Raw Material during year. 2,000 units .				25,000
,, ,,	,, Manufacturing Expenses during year				40,000
,, ,,	,, Balance, Gross Profit . .				32,500
					£147,500

		Purchased.			£
		Date.	*Units*	*Cost per Unit.*	
1917. Dec. 31.	By Sales of Manufactured Goods during year . . .				90,000
,, ,,	,, Raw Material in hand 4,000 units at £2	1913	1,000	30/-	8,000[2]
		1914	1,000	70/-	
		1915	1,000	£5	
		1916	1,000	£8	
	1,000 units at £2	1917	2,000	250/-	2,000[3]
	1,000 units at cost				12,500
,, ,,	,, Manufactured Goods in hand .				35,000
					£147,500

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[1] Cost will be found to have been £20,000.
[2] ,, ,, ,, 18,000.
[3] ,, ,, ,, 12,500.

71. Constant quantity valued at fixed price.—(*contd.*)

(from £20,000 to £43,000). Now the stock on 1st January was 5,000 units at an average cost of £4 each; that on 31st December was 6,000 units at an average cost of £7⅙ each. Hence the increase of £23,000 is due partly to the increased number of units (6,000 as against 5,000), but also to the increased cost per unit (£7⅙ as against £4).

The classes of industry intended to be met by Rules 71 to 77 do not keep their accounts in this fashion. They view the matter thus. They can never dispose of all their raw material—to do so would necessitate the cessation of trading. Why should they show a profit because they have had to pay more for the replenishment of their stocks ?

A further manufacturing account in much more detail is shown on page 239. The raw material is valued on a different basis.

Rules 71 to 77 permit the adoption of this system of valuing stocks in the circumstances stated therein. It is assumed that the concern must always have 5,000 units of a material which is used up in five years, and that these 5,000 units are not worth more because they cost more.

72. Stocks kept by classes of industries.

72. Rule 71 covers stocks of raw or semi-manufactured goods which classes of industry require to keep for manufacturing processes.

(*See Part* 2 *of Memorandum after Rule* 62.)

The reference to *classes* of industry should be noted. It is an essential requirement of Rules 71 to 77 that the practice in question must be recognized by the whole of a class. See *Rule* 74 for a further requirement as regards the class; also Rule 78 for cases in which specific taxpayers act in accordance with Rules 71 to 77, but in which the class to which they belong does not follow the practices concerned.

72. Stocks kept by classes of industries.—(*contd.*)

See page 104 as regards what constitutes a class. Applications that Rules 71 to 77 should apply in any case should be made to the Board of Inland Revenue.

73. The stocks in question must be of such an imperishable character that a minimum quantity required for a business could be held untouched for a long period.

73. Stocks must be imperishable.

(*See Part* 2 *of Memorandum after Rule* 71.)

The Memorandum expresses the willingness of the Board of Inland Revenue to regard stocks as imperishable if they are of sufficient durability to last without material deterioration during a period equal to the length of the war.

74. A recognized practice must have obtained, in the class of trade, of valuing a constant quantity at a constant price.

74. Practice of class in valuing stocks.

(*See Part* 2 *of Memorandum after Rule* 71.)

This rule refers to the traders' own accounts. The rules now being dealt with constitute a concession, and it will not be extended to classes of trade which have not been in the habit of acting accordingly for their own purposes. (See Rule 71 for notes on the practice referred to.)

75. Practice of class but not of trader

75. When the practice in question has obtained in a class of trade, any member of that class may be given the benefit of Rule 71 although he himself has not adopted the practice.

But the quantity of stock so dealt with may not exceed the minimum amount held at any stocktaking in the three pre-war trade years.

(*See Part* 2 *of Memorandum after Rule* 71.)

Rule 18 explains the meaning of three pre-war trade years.

76. Balance of Stock.

76. The balance of stock above the minimum quantity dealt with in accordance with Rules 71 to 77, may be treated as in Rule 69.

(*See Part* 2 *of Memorandum after Rule* 71.)

77. Stock reduced below constant quantity.

77. Where stock has been reduced below the "constant quantity," profits on the sales which have effected this are taxable in the ordinary way.

But where such stock is of "a raw material associated with plant in a manufacturing process," the depletion may be the subject of a claim under Rule 65 (exceptional depreciation of the stock) or under Rule 64 (renewals of stock postponed).

"Profits derived from sales which reduce stock" below the particular minimum or constant quantity adopted for any business are not the less trading profits. Where, however, a raw material is associated with plant in a manufacturing process (*e.g.*, metal kept to a constant level in galvanizing baths), the Board of Inland Revenue will consider a claim under Section 40 (3) of the Finance (No. 2) Act, 1915, that it is akin to a capital asset, like plant, which has been exceptionally depreciated (by depletion) or of which the renewal has been postponed. (*From Part* 2 *of Official Memorandum.*)

77. Stock reduced below constant quantity.—(*contd.*)

In the example given under Rule 71, the concern might have determined that it would not purchase any raw material in 1917 owing to the large increase in price. In Account II the Debit items would be reduced by £25,000, and the Credit items would be reduced by £14,500 (£2,000 *plus* £12,500). The result would be an increased profit of £10,500 (£25,000 minus £14,500). Rule 77 requires this to be taxed, but admits a claim for the allowance of £10,500 under Rules 64 or 65. (It will be found that had the ordinary renewals been made—1,000 units at £12 10s. per unit—the profit shown by the account would be £32,500, as in Account II.)

The Memorandum gives an example of the " raw metal associated with plant in a manufacturing process," viz., " metal kept to a constant level in galvanizing baths."

IV.—SPECIAL MODIFICATION: FOR A TRADER CONFORMING TO RULES 71 TO 77, EXCEPT THAT HE IS NOT A MEMBER OF A PRESCRIBED CLASS, OR THAT HIS STOCK IS NOT OF THE PRESCRIBED CHARACTER.

78. Trader within rules except as regards class of industry or of stock.

78. Where a trader values stock as in Rule 74, but either

(*a*) he is not a member of a class which conforms to both Rules 72 and 74; or

78. Trader within rules except as regards class of industry or of stock. —(*contd.*)

(*b*) the stock does not come within Rule 73; he must, for Excess Profits Duty purposes, adopt the general principle stated in Rule 68.

But he may either

(i) claim a deduction from the valuation in the last Accounting Period, equal to the difference at the end of the Standard Period between the valuation he adopted and a valuation under Rule 68; or

(ii) revise his stock valuation for all periods in accordance with Rule 68, and claim the concession accorded under Rules 69 and 70.

"Where in an industry or as respects a class of stock to which the foregoing (2)[1] does not apply, the owner of a business has taken a quantity of stock at a base price, the stock will fall to be valued during the periods of liability at cost or market value, whichever is the lower; but from the final valuation (on that basis) there will be allowed a deduction of a sum (in pounds sterling) equal to the original difference (at the end of the standard period) between the valuation on the base method and a valuation on the cost or market value method. Alternatively the first stock valuation may be revised and put upon the general basis of cost or market value when the modification outlined in (1)[2] will apply." (*Part* 3 *of Official Memorandum.*)

[1] Page 237.

[2] Page 235.

CHAPTER XII

The Computation of Profits: the Sale or Disposal of Trading Stock

SPECIAL RULES AS FROM 22ND APRIL, 1918—WHAT "SALE" INCLUDES—WHAT "TRADING STOCK" INCLUDES—WHERE TRADING STOCK IS SOLD WITH OTHER ASSETS—WHERE A BUSINESS IS CONTINUED UP TO SALE—WHERE BUSINESS CEASED BEFORE SALE—LIABILITY OF LIQUIDATOR OR OTHER PERSON AUTHORIZING SALE—CHANGE OF OWNERSHIP NOT DEEMED TO EXIST—DISPOSAL OF STOCK AFTER 14TH MAY, 1918, OTHERWISE THAN BY SALE.

79. Sales after 22nd Apl., 1918.

79. Special rules exist as regards trading stock belonging, or formerly belonging, to any trade or business, which is sold after 22nd April, 1918, otherwise than in the ordinary course of trade.

The "special rules" in question form the subject of this chapter.

The following enactment covers all the rules contained in this chapter.

For the purposes of Excess Profits Duty the profits arising from the sale at any time after the twenty-second day of April, nineteen hundred and eighteen, otherwise than in the ordinary course of trade of the trading stock or part of the trading stock belonging or formerly belonging to any trade or business, shall be deemed to be profits arising from a trade or business, and where any such sale takes place after a trade or business has ceased the trade or business shall be deemed to have been carried on up to and including

79. Sales after 22nd Apl., 1918. —(*contd.*)

the date on which the sale takes place, and the accounting period shall be taken to be such as the Commissioners of Inland Revenue may determine. (*Finance Act*, 1918, s. 35 (1).)

Where a trade or business has ceased but is deemed for the purposes of this section to have been carried on for any period—

(a) *the person by whom or by whose authority any trading stock is sold whether as owner, agent, liquidator, trustee, or receiver or other person acting in a similar capacity shall be deemed to be the person carrying on the trade or business and Excess Profits Duty shall be assessed on and recoverable from that person and nothing in subsection* (2) *of section forty-five of the principal Act shall operate so as to impose any liability to duty on the purchaser of the trading stock; and*

(b) *the appointment of any such liquidator, trustee or receiver, or other person shall not be treated as a change of ownership of the trade or business, and subsection* (3) *of section thirty-eight of the principal Act and paragraph seven of Part I of the Fourth Schedule to that Act as amended by any subsequent enactment shall have effect as if the profits arising from the sale of the trading stock had been made by the owner of the business immediately before the appointment of the liquidator, trustee, receiver, or other person, and as if the duty were payable by him.* (s. 35 (2).)

Where any trading stock is sold together with other assets of the trade or business, the part of the consideration attributable to the trading stock shall, subject to appeal in manner provided by subsection (5) *of section forty-five of the principal Act, be determined by the Commissioners of Inland Revenue, and the part of the consideration so* *determined shall be deemed to be the price paid for the trading stock by the purchaser.* (s. 35 (3).)

79. Sales after 22nd Apl., 1918.—(*contd.*)

For the purpose of this section any trading stock which has been disposed of otherwise than by way of sale shall be deemed to have been sold, and any such trading stock so disposed of, and any trading stock which has been sold for a consideration other than cash, not being a consideration the value of which can be easily ascertained, shall be deemed to have realized the market price of the day on which it was so disposed of or sold.

No person shall at any time after the fourteenth day of May, nineteen hundred and eighteen, dispose otherwise than by way of sale of any trading stock unless he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any Excess Profits Duty which may be chargeable by virtue of the provisions of this section, and if any person attempts to dispose of any trading stock in contravention of this provision the disposal shall be void and of no effect. (s. 35 (4).)

In this section the expression " trading stock " includes—

(a) *any goods such as are sold in the ordinary course of a trade or business whether in a finished condition or not; and*

(b) *any raw or other materials used in the manufacture or preparation of any such goods,*

and references to disposal of trading stock do not include disposal by way of testamentary disposition. (s. 35 (5).)

The reason for these rules may be explained by example. Assume that a merchant's stock-in-trade cost him £10,000. At current prices he might perhaps be able to sell this stock, in the ordinary course of trade, for £30,000, his gross

79. Sales after 22nd Apl., 1918.—(*contd.*)

profit being £20,000. It is probable that such a series of transactions would yield a large excess profit, and that perhaps £12,000 (of the £20,000) would be payable as Excess Profits Duty; the gross profit remaining being £8,000.

But the merchant might close his business and form a company to purchase the stock for £25,000. If this sale took place after he had ceased to trade, and merely as incidental to the closing of his business, the "gross profit" of £15,000 would not heretofore be considered to be a trading profit. It would not be liable to Excess Profits Duty, and the merchant would retain £15,000 instead of £8,000. The new company might sell the stock in a series of trading transactions for £30,000, but its gross profit would be £5,000 only, and liability to Excess Profits Duty would be little or nothing. It will, of course, be recognized that such an arrangement would be made only where the value of the stock formed a considerable part of the merchant's assets, and where such value had largely increased during the war.

In the course of the debate on the Finance Bill, 1918, Mr. Currie, M.P., said—

"There is a well-known case in Scotland where a whisky business was bought a few years ago by a body of enterprising men, and, according to current rumour, I believe well founded, bought up another well-known whisky business for £2,000,000; and on the ground that this was a capital transaction, not a single farthing of Excess Profits Duty was paid, an injustice being brought about, very hard to bear, upon the general body of taxpayers, and not merely other Excess Profits Duty taxpayers. My belief is that a good many transactions of that class entered into some time ago were entered into on the understanding that price representing the consideration of the transaction was to be paid by instalments as the goods were sold to the public, and if that is so, it follows that many of these transactions are still in the stage of incompletion."

79. Sales after 22nd Apl., 1918.—*(contd.)*

The remedy to such a leakage of duty is contained in the following rules, which would require the merchant's "gross profit" of £15,000 (on sale to the company) to be regarded as a trading profit and as part-result of the assessable transactions of his business.

Certain pressure was put on the Chancellor of the Exchequer to make the new enactments retrospective, but he declined. He said—

"If I believed that all, as I believe there are some, were cases where transactions took place for the express purpose of avoiding the Excess Profits Duty, I would have had no hesitation whatever in making it retrospective, but I am led to believe that there were a good many transactions of that kind which were really done in the ordinary way of business."

It may be explained that the date referred to in the above Rule (22nd April, 1918) was that on which the Budget was introduced and notice given of the proposed enactment.

For a case on the subject of realization of stock, see page 85.

80. What "sale" includes.

80. In Rule 79, "sale" includes—

(*a*) sale for a consideration other than cash, and

(*b*) disposal otherwise than by way of sale; but it does not include

(*c*) disposal by way of testamentary disposal.

The enactment in question is set out after Rule 79.

(a) *Sale for a consideration other than cash.*— The word "consideration" is of the widest possible meaning. Whatever advantage accrues to the vendor in return for the stock is the consideration, or part of the consideration. See the succeeding rule as regards what value may be put upon a consideration other than cash.

(b) *Disposal otherwise than by way of sale.*— If the company owning the stock were wound up, there would be several means available by which the stock might be disposed of otherwise than by way of sale. To "dispose" of signifies ceasing to own, and any concern ceasing to own what has been its trading stock must come under (*a*) or (*b*). The latter, (*b*), clearly includes disposal by way of free gift. Under the succeeding rule, it is shown that stock given away would be deemed to have been sold at the market price of the day.

(c) *Disposal by way of testamentary disposal.*— This could occur on the death of a person trading alone, with the proviso that the business to which the stock had belonged (i) should pass to the same

80. What "sale" includes.—(*contd.*)

person or (ii) should cease or (iii) should pass to a different person. Under (i) the change in proprietorship would not affect the assessability of the business, so far as the stock were concerned. The stock has not been "disposed of" by the business. Under (ii), it is clear that Rule 79 would have applied, but for the specific exception now in course of illustration. This exception operates so that the final Balance Sheet of the business would include the stock, as an asset, valued just as it would have been had the death not occurred and were the business to continue as before. Under (iii), the final Balance Sheet of the business under the deceased would include the stock as under (ii). A new Balance Sheet should at the same time be drawn out for the business under the new proprietor, excluding the stock in question. The new capital would not necessarily be the same as the old.

81. Consideration not easily ascertainable.

81. Where stock has been disposed of or sold for a consideration the value of which cannot be easily ascertained, such stock is to be deemed to have realized the market price of the day on which it was disposed of or sold.

The enactment in question is set out after Rule 79.

The market price of the day is a matter of fact to be determined in the first instance by the assessing authority (the Commissioners of Inland Revenue—*Rule* 112). Appeal may be made to the appeal authority (the General Commissioners for the District, or the Special Commissioners—*Rule* 116).

It may be doubted whether this rule operates

81. Consideration not easily ascertainable.—(*contd.*)

as regards the new owner of the stock. In the ordinary case he would be required to ascertain the value of the consideration (*Rule* 93). It is clear that that requirement still holds. The present rule operates " for the purpose of this section " only—*see* enactment under Rule 79.

82. Trading stock sold with other assets.

82. Where the trading stock is sold together with other assets, the Commissioners of Inland Revenue may determine what part of the consideration shall be attributed to the trading stock. Appeal may be made to the General Commissioners for the Division, or to the Special Commissioners. (*Rule* 116.)

The enactment in question is set out after Rule 79.

83. "Trading stock" defined.

83. In Rule 79 " trading stock " includes—

(*a*) any goods such as are sold in the ordinary course of a trade or business, whether in a finished condition or not; and

(*b*) any raw or other materials used in the manufacture or preparation of any such goods.

The enactment in question is set out after Rule 79.

The only difficulty likely to be experienced in the application of this rule will concern " unfinished " and " raw " materials. Even here the descriptions are very wide. The terms include all that might be described as *circulating capital* (*i.e.*, assets acquired or produced for re-sale or sale at a profit). Where the asset has been acquired, it is clearly within the rule as from the date it was acquired. But where it has been produced, closer consideration is necessary.

83. "Trading stock" defined.—(contd.)

Such asset may have been produced by working upon raw materials or parts which themselves were acquired. There is no difficulty here, as even the materials and parts were trading stock. On the other hand, the asset may be a colliery's stock of coal, produced from the mine. It would appear that the coal became "trading stock" from the time it was "gotten." A doubt might arise, in theory, as regards "gotten" coal not yet brought to the surface, or as regards (say) nitrates taken from the nitrate beds abroad, but not yet brought to this country. In this case, as in all others, the asset probably becomes trading stock as soon as it is saleable. Usually stock in transit is comparatively small; but if the question arises, the term "trading stock" is likely to be given the widest possible interpretation.

84. Existing business.

84. If the trading stock belongs to a trade or business existing at the time of sale, the profit on such sale is deemed to arise from the business.

The enactment in question is set out after Rule 79.

This is the simplest case, in which a concern disposes of its stock in bulk, instead of in a series of transactions. The sum received appears in the trading account in the ordinary way.

It is immaterial whether or not the concern ceases business immediately after the sale.

"Sale" has the broad definition given to it in Rules 80 and 81.

85. Business ceased.

85. If the business to which the trading stock belonged has ceased at the time of sale, it is nevertheless deemed to have been carried on up to and including the time of sale. In this case the Accounting Period is to be determined by the Commissioners of Inland Revenue.

The enactment in question is set out after Rule 79.

This rule has two branches: (*a*) the prolongation of trading operations to include the sale; and (*b*) the determination of the Accounting Period.

(a) *The prolongation of trading operations to include the sale.*—A business may have ceased, say, at 10th March, 1918; and its last account may have been drawn out to cover the period from 1st January, 1918, to 10th March, 1918. The stock-in-trade may have been disposed of on 1st May, 1918. In this case, the business is regarded as having continued up to and including 1st May, 1918. Between 11th March, 1918, and 1st May, 1918 (inclusive), the trade has resulted in a profit represented by the sum or consideration, etc., received for the stock, less the value at which it stood in the books at 10th March, 1918, and less expenses. Expenses would include the expenses of the owner, agent, liquidator, trustee, or receiver or other person (who is deemed to have carried on the business), so far as such expenses had relation to the stock and were incurred with a view to and in the course of its sale.

(b) *The determination of the Accounting Period.*—In the ordinary course the period between

1st January, 1918, and 10th March, 1918, would form an Accounting Period (Rule 16) ; similarly, the period between 11th March, 1918, and 1st May, 1918, would form an Accounting Period so soon as the account of the sale on 1st May, 1918, had been drawn up. Under the last part of the present rule, however, the Commissioners of Inland Revenue may vary this and make what order they think fit as regards the duration of the Accounting Period.

85. Business ceased.—*(contd.)*

86. Where the business had ceased and Rule 85 operates, the person by whose authority the trading stock is sold is deemed to be the person carrying on the business and is liable to pay the duty.

This may apply to the owner, agent, liquidator, trustee, receiver or other person acting in a similar capacity, who authorizes the sale.

86. Liquidator, etc., liable.

The enactment in question is set out after Rule 79.

87. After the 14th May, 1918, no person may dispose of trading stock other than by way of sale, unless he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any Excess Profits Duty which may be chargeable.

Any disposal of stock in contravention of this rule is void and of no effect.

87. Disposal after 14th May, 1918.

The enactment in question is set out after Rule 79.

This rule clearly includes disposal by way of gift, which is mentioned here by way of illustration of the extensive scope of the rule.

87. Disposal after 14th May, 1918.—(*contd.*)

General Note on Chapter XII.

Nothing in this chapter may cause—

(*a*) Rules 38 and 114 to operate so as to impose any liability on the purchasers of the stock;

(*b*) the appointment of a liquidator, etc., to be treated as a change of ownership;

or shall prevent—

(*c*) Rules 5 and 6 from having effect, as if the profits of the sale had been made by the previous owner.

See enactment after Rule 79, page 245.

CHAPTER XIII

The Computation of Profits: Rules for Special Concerns

LIFE ASSURANCE COMPANIES—INVESTMENT COMPANIES—UNDERTAKINGS OF LOCAL AUTHORITIES—CO-OPERATIVE SOCIETIES.

88. Life Assurance companies: investment companies.

88. In the case of life assurance businesses and investment companies, the income from investments is to be taken into account. Adjustments are to be made in respect of variation in the value of investments which is not due to a variation of profit; also in respect of Excess Profits Duty having been paid by or repaid to the company with whom the investment was made.

In estimating the profits no account shall be taken of income received from investments[1] *except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—*

(a) *Any variation in the value of any of those investments which appears to the Commissioners of Inland Revenue not to be due to a variation in profits shall also be taken into account; and*

(b) *Where the income has been derived from profits in respect of which any payment or repayment of Excess Profits Duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allowance for that payment or repayment of duty.* (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part I*, 8.)

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[1] See Rule 44.

88. Life Assurance companies: investment companies.—(*contd.*)

(As to the exclusion of the income from investments in other cases, see Rule 44.)

Irish Catholic Church Property Insurance Company v. Commissioners of Inland Revenue (1918). It was held that a company carrying on fire and employers' liability insurance business is not a company whose "principal business" consists of making investments.

(Other decisions in this case are referred to under Rules 39 and 92.)

Under the Finance Act, 1915 (Sec. 11), it was provided that for Income Tax purposes the life assurance business of a company should be regarded separately from any other business. This direction would extend to Excess Profits Duty (Rule 39).

Reference is made to *investment companies* ("businesses where the principal business consists of the making of investments"). The status of a company in this connection is practically certain to have been determined already for Income Tax purposes. Companies within the rule must be distinguished from companies whose principal business is the buying and selling of stocks and shares.

Variation in the value of investments not due to a variation of profit.—Where the value of an investment has varied *because of* an increase or decrease in the profit made by the company concerned, the variation in value is not taken into account for Excess Profits Duty purposes. The variation in profit will naturally have made itself felt in the Profit and Loss Account. Where, however, the

88. Life Assurance companies: investment companies.—(*contd.*)

value of an investment has varied on some account *other than* an increase or decrease in the profit made by the company concerned, such variation in value is to be taken into account. An example may be taken as follows—

	1911.	1912.	1913.	1914.
	£	£	£	£
Income from investments . . .	18,000	19,000	20,000	30,000
Allowable Expenses .	3,000	4,000	4,000	5,000
Net Income . .	£15,000	£15,000	£16,000	£25,000
Value of Investments :	£	£	£	£
Investments whose value has varied because of variation in profit .	200,000	210,000	230,000	280,000
Other Investments .	100,000	100,000	100,000	90,000
Total Value .	£300,000	£310,000	£330,000	£370,000

Assuming that changes in the investments held over the four years may be neglected for our purpose, the effect of the rule is that the leap to £280,000 in the value of the " variation in profit " shares is not to be regarded in calculating liability (the taking of the rise in income into account being sufficient) ; but that allowance is to be made for the £10,000 lost in the capital value of other shares.

Income from a source already charged with Excess Profits Duty.—The general intent of this rule is that if a company would have received a yield of (say) £8,000 from a second company, but receives a yield of only £6,000 because of the Excess Profits Duty charged on the second company, that £6,000 may not in fairness be reduced to £4,000 by a second

88. Life Assurance companies: investment companies.—(*contd.*)

charge of the same duty. If, in a later period, the yield would be £5,000, but is increased to £7,000 by reason of the repayment of Excess Profits Duty to the second company, a reverse adjustment must be made.

The exact working out of adjustments under both sections of this rule must depend on the circumstances of the case concerned. Under the second heading careful consideration would have to be given to the question as to what dividend would have been received had no Excess Profits Duty been charged on the company in which the investment was made.

89. Local Authorities.

89. The industrial undertakings of a Local Authority are to be regarded as separate businesses, but the results are to be aggregated. Sums required to be raised by the undertakings for sinking fund purposes are to be allowed as deductions from profits.

In computing the total profits of a local authority from any trades or businesses carried on by that authority the total amount which is required to be raised by them, out of the rates or otherwise, for sinking fund purposes in connection with those trades or businesses shall be allowed as a deduction. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 9.)

The Act distinctly implies that a local authority carries on businesses and not a business ; also that the " total profits " are to be computed. See notes on page 39.

The reference in the Act to amounts raised for sinking fund purposes " out of the rates or otherwise " bears on undertakings which receive rates or

89. Local Authorities.—(*contd.*)

grants from the rates or which are included in Funds into which rates are paid. Thus a municipal waterworks might result generally as follows—

Receipts from *sale* of water . .	£5,000
,, ,, water-rates . .	100,000
	£105,000
Expenses of production . . .	98,000
Surplus. . .	£7,000

For Income Tax purposes (and, therefore, for purposes of the duty under consideration), the profit would be something like—

$$\pounds 7{,}000 \times \frac{\pounds 5{,}000}{105{,}000} = \pounds 333$$

The sinking fund payment might be £3,000, and this would be ignored for Income Tax purposes. In dealing with the Excess Profits Duty, however, the waterworks must be taken to have resulted in a loss of £2,300. This would be aggregated with the results of the remaining undertakings of the authority.

90. Industrial and Provident Societies.

90. The liability of an Industrial and Provident Society is computed by ascertaining by how much the profits per member in the accounting period exceeded the profits per member in the pre-war period taken as the basis of the standard of profits, and by multiplying the excess by the number of members in the accounting period.

As regards accounting periods ending after 31st December, 1916, an alternative method of computation

90. Industrial and Provident Societies.—(*contd.*)

is permitted, viz., the ascertaining of any excess on transactions with non-members by the ordinary rules, and the ascertaining of any excess on transactions with members by reference to increased profit or surplus per pound of turnover. There are restrictions as regards allowances for deficiencies when this alternative is adopted.

In the case of societies registered under the Industrial and Provident Societies Acts, the Excess Profits Duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by the number of members in the accounting period. (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part I,* 10.)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December nineteen hundred and sixteen, the following provisions shall have effect—

> *The Excess Profits Duty of a society registered under the Industrial and Provident Societies Acts may, if the society so requires, instead of being computed as provided for by paragraph ten of Part I of the Fourth Schedule to the principal Act, be computed as follows—*
>
> > *The amount of excess profits (if any) arising on commercial transactions with non-members shall be separately ascertained in accordance with the general principles of the principal Act, and there shall be added thereto the amount (if any) by which the profit or surplus arising from transactions with members per pound sterling of turnover in the accounting*

90. Industrial and Provident Societies.—(contd.)

period exceeds the like profit or surplus in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits in respect of such commercial transactions as aforesaid, multiplied by the number of pounds sterling of turnover in the accounting period; and Excess Profits Duty shall be charged on the sum of those amounts:

Provided that the method of computation hereby laid down shall not be adopted for ascertaining the amount of any deficiency or loss for the purposes of subsection (3) *of section thirty-eight of the principal Act, nor shall any duty computed under this provision be repaid or remitted by reason of a deficiency or loss in any other accounting period computed as provided for by the said paragraph* (10).

Regulations made by the Commissioners for the purpose of carrying the foregoing provision into effect may provide for defining and ascertaining turnover and the profit or surplus per pound sterling thereof, and for the application of that provision to new societies, and for extending, subject to such modifications as may be prescribed, to cases where duty is computed under that provision any of the general principles of the principal Act as to relief from duty. (*Finance Act*, 1917, s. 26 (8).)

The profits concerned include the surplus arising from transactions with members. No Income Tax assessments are made in respect of the profits or surpluses of such societies.

The society has obviously the same options with regard to the selection of the pre-war trade years,

90. Industrial and Provident Societies.—(contd.)

on the trading of which the standard of profit is based (Rule 20). The normal case may be illustrated as follows—

Year to 31st December, 1911—
  Number of Members, 1,500 Profit £29,000
Year to 31st December, 1912—
  Number of Members, 1,600 Profit £31,000
Year to 31st December, 1913—
  Number of Members, 1,700 Profit £34,000
Year to 31st December, 1914—
  Number of Members, 1,800 Profit £40,000

	£	s.	d.
Profit for Member, 1911 . .	1	18	4
,, ,, 1912 . .	1	18	9
,, ,, 1913 . .	2	0	0
,, ,, 1914 . .	2	4	5⅓

$$\text{Standard of Profit} = \frac{£2 + £1\ 18\text{s. }9\text{d.}}{2}$$

= £1 19s. 4½d. per member.

Profit in Accounting
  Period .. .. = £2 4s. 5⅓d. per member.

Excess = 5s. 0⅚d.

	£	s.	d.
Multiply excess by 1,800 =	456	5	0
Allowance =	200	0	0
Taxable Excess	£256	5	0

90. Industrial and Provident Societies.—(*contd.*)

The alternative method of computation is intended to meet the complaint that increased prices entail a nominally increased turnover, and that as regards members it is inequitable to charge Excess Profits Duty on the nominally increased surplus (or discount) returned to members.

The Regulations made by the Commissioners of Inland Revenue are as follows—

REGULATIONS DATED 31ST DECEMBER, 1917, MADE BY THE COMMISSIONERS OF INLAND REVENUE, UNDER SECTION 26 (8) OF THE FINANCE ACT, 1917

Short Title

1. These Regulations may be cited as the Industrial and Provident Societies' (Excess Profits Duty) Regulations, 1917.

Definition of Terms used

2. In these Regulations (unless the context otherwise requires) the expressions—

Trade account,
Sales of goods,
Stocks at beginning [of year],
Stocks at end [of year],
Purchases of goods and carriage,
General expenses chargeable to trade (expenditure),

shall refer to and be construed in the same manner as the same expressions are construed respectively in the annual return prescribed by the Chief Registrar for Societies carrying on Industries and Trades under the Industrial and Provident Societies' Acts, 1893 to 1913.

In the case of any Society to which subsection 26 (8) of the Finance Act, 1917, applies, which is in receipt of profits other than profits from the sale of goods and commodities, the term " sales " in these rules shall be deemed to include rents and all receipts of whatever nature in connection with such profits.

Profit on Commercial Transactions with Non-members

3. The profit on commercial transactions with non-members for any accounting period or pre-war trade year shall be ascertained as follows—

90. Industrial and Provident Societies.—(contd.)

(*a*) The sales of goods shown in the trade account shall be analysed and the sums included for sales to non-members ascertained.

From the total of sales to non-members deductions shall be made as follows—

(*b*) There shall be deducted so much of the items " stocks at beginning [of year] " and " purchase of goods and carriage " in the trade account and of any productive wages or other heads of expenses taken into account in periodical valuations of stocks, which may be incurred in the period, as relates to the actual goods sold to non-members in the accounting period, if separately or specifically ascertainable; or, if and so far as the separate figures are not so ascertainable, there shall be deducted a cost price which shall bear the same proportion to the cost price of all goods sold as the sales of goods to non-members bear to the total sales.

The cost price of all goods sold shall be taken to be the total of the " stocks at beginning [of year] " and " purchases of goods and carriage " and productive wages and other expenses taken into account at the periodical valuations of stock, less the " stocks at end [of year]."

(*c*) There shall be deducted the specific expenditure permitted under the provisions of the Finance (No. 2) Act, 1915, which has been incurred in the period in respect of sales to non-members as ascertained under subsection (*a*) of this Rule, if such expenditure be known, or so far as it is known, and so far as it may be necessary to be separately estimated and if not already included in subsection (*b*) of this rule, including in any such expenditure any dividend or discount to non-members.

(*d*) There shall be deducted any further charges or overhead expenses (or parts thereof), additional to those allowed under subsections (*b*) and (*c*) of this Rule, which are permitted under the provisions of the Finance (No. 2) Act, 1915, and which were incurred in respect of the sale to non-members and may not be specifically capable of allocation. The said charges and expenses shall bear the same proportion to the total of such charges as the sales to non-members bear to the total sales.

The amount by which the profit under this Rule for the accounting period exceeds the average profit similarly computed for the pre-war years adopted as standard years

90. Industrial and Provident Societies.—(contd.)

(proportionately reduced where the accounting period is less than a year) shall be deemed to be the excess profit arising on commercial transactions with non-members.

Profit or Surplus

4. " Profit or surplus " shall be computed in the same way as profits would be computed under the Finance (No. 2) Act, 1915, for the purposes of Rule 10 of Part I of the Fourth Schedule to that Act.

Profit or Surplus arising from Transactions with Members

5. The profit or surplus arising from transactions with members shall be ascertained by deducting from the amount computed in accordance with Rule 4 of these Regulations the profit on commercial transactions with non-members for the same period as computed under Rule 3.

Turnover

6. " Turnover " shall be deemed to be the amount of sales of goods appearing in the trade account less the sales to non-members as ascertained under Rule 3 (*a*) of these Regulations.

Profit or Surplus per Pound Sterling of Turnover

7. The profit or surplus per pound sterling of turnover shall be the profit ascertained under Rule 5 of these Regulations divided by the turnover in pounds sterling as ascertained under Rule 6.

8. Where the amount per pound sterling ascertained under Rule 7 of these Regulations for the accounting period exceeds the average of the amounts similarly ascertained for the pre-war trade year adopted as the standard years under subsection (8) of Section 26 of the Finance Act, 1917, such excess shall be ascertained and when ascertained shall be multiplied by the number of pounds sterling ascertained as the turnover in the accounting period under Rule 6.

9. For the purpose of the assessment and charge of Excess Profit Duty, the excess profits arrived at respectively under Rules 3 and 8 of these Regulations shall be added together, provided that, where the computation under either rule results in a minus quantity, that quantity shall be treated as nil ; and from the sum arrived at there

90. Industrial and Provident Societies.—(*contd.*)

may be made the following allowances by way of relief from duty before the duty is computed, that is to say—

(*a*) In respect of any increased capital under subsection (1) of Section 41 of the Finance (No. 2) Act, 1915, an allowance at the rate of 9 per cent. per annum on the increase of the apportioned capital employed in the accounting period over the average amount of the apportioned capital employed in the pre-war standard years, provided that the allowance so made shall not exceed the Excess Profits arrived at under Rule 3 of these Regulations.

The apportioned capital shall be such part of the total capital (computed under Part III of the Fourth Schedule to the Finance (No. 2) Act, 1915) as bears the same proportion to the whole as the sales to non-members bear to the total sales.

(*b*) The allowance at the rate of £200 per annum provided by Section 38 of the Finance (No. 2) Act, 1915.

(*c*) In cases where the total average profits of the pre-war years chosen for the standard (ascertained according to Rule 4 of these Regulations) do not exceed £500 and where the profits of the accounting period, similarly computed, less any allowance in respect of increased capital under Rule 9 (*a*) of these Regulations, are less than £2,000 per annum, a further allowance as provided by subsection (4) of Section 26 of the Finance Act, 1917, and where the total average profits of the standard years exceed £500, an allowance reduced in accordance with that subsection.

(*d*) Any allowance which would fall to be made under subsection (3) of Section 40 of the Finance (No. 2) Act, 1915, if the trade or business were not owned by a society registered under the Industrial and Provident Societies' Acts.

Time Limit and Evidence

10. Any Society requiring to be assessed under the provisions of subsection (8) of Section 26 of the Finance Act, 1917, shall give notice of such requirement not later than two months from the date when the Commissioners of Inland Revenue require a return under Section 44 of the Finance (No. 2) Act, 1915, and shall furnish such accounts and particulars as the Commissioners may require in support of their return in respect of liability or non-liability under the said subsection 8 of Section 26 as the

case may be, and to enable the apportionments under these Regulations to be made or examined.

90. Industrial and Provident Societies.—(*contd.*)

11. In cases which present exceptional features the liability shall be computed as nearly as may be upon the foregoing principles.

By order of the Commissioners of Inland Revenue,

R. V. NIND HOPKINS,
Secretary.

31st December, 1917.

CHAPTER XIV

The Estimation and Effect of the Amount of Capital Employed

IN ESTIMATING CAPITAL, ASSETS ARE TO BE IGNORED IF THEIR INCOME IS EXCLUDED FROM PROFITS—MONEY—ASSETS ACQUIRED BY PURCHASE—ASSETS NOT ACQUIRED BY PURCHASE—DEBTS—CAPITAL LOST IN PRE-WAR YEARS—THE GOODWILL OF A PRIVATE COMPANY—INCREASE IN CAPITAL—DECREASE IN CAPITAL — CAPITAL FORMERLY UNREMUNERATIVE.

FOR Income Tax purposes, capital matters are hardly regarded. So long as capital charges have been excluded from the expenses, the requirements are satisfied.

For Excess Profits Duty purposes, capital matters are as important as revenue matters. This is because allowance is made in respect of excess profits deemed to be attributable to increased capital, and because the reverse operation takes place where capital has decreased. (Rules 98 and 99.)

But there is another reason. Capital and revenue are, as a rule, interdependent for Excess Profits Duty purposes. Thus, to reject the title of a charge to appear in the revenue accounts is to add it to the capital outlay on which allowance is usually made as stated. Even an expenditure under the heading " Preliminary Expenses " is denied a place among revenue expenses, and therefore is admitted as an item of capital.

Again, the admission of income as a trading receipt depends on the admission, as capital used in the business, of the capital in respect of which such income arises. (See Rules 44 and 91.)

The rules for the computation of capital will now be stated.

91. Capital ignored if income ignored.

91. In estimating capital for Excess Profits Duty purposes, no account may be taken of assets the income on which is ignored in estimating profits.

Any capital the income on which is not taken into account for the purposes of Part I of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III[1] *of this Act.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part III,* 2.)

As regards the application of the rules contained in this chapter attention is invited to the matters dealt with in the comprehensive examples (Chapter XI). The ascertainment of capital is the most difficult thing in the Acts.

See Rule 44 regarding the exclusion of income from investments from any computation of profits for purposes of this duty.

It follows necessarily that the capital sunk in the investments must be ignored in any computation of the actual capital of the business. But see Rule 44 for notes on bank deposits, War Loan

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[1] *i.e.*, the Part relating to the Excess Profits Duty.

91. Capital ignored if income ignored.—(*contd.*)

stock, trade advances, and similar assets which may or may not be regarded as investments.

92. Capital includes money and past profits.

92. In estimating capital, account may be taken of the money employed in the business, even though it represents profits accumulated in previous (but not the present) accounting period.

The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(Here follow the enactments set out under Rules 93 to 95.) (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part III*, 1.)

Nothing in this part of this Schedule shall prevent accumulated profits employed in the business being treated as capital. (*Fourth Schedule, Part III*, 3.)

It is hereby declared that, for the purpose of Excess Profits Duty, profits of any trade or business arising and accumulating during any accounting period are not, during that period, to be treated as accumulated profits within the meaning of Part III of the Fourth Schedule to the principal Act, or as capital employed in the trade or business. (*Finance Act*, 1916, *s.* 52.)

The Balance Sheet of a company is likely to include the profit of the period just ended, which profit is, in part, awaiting distribution as dividend. In such a case, only part of the cash in hand can be considered as being " employed in the business." See examples in Chapter XVII and particularly under Item 109, page 359.

In 1916 Mr. McKenna (*Chancellor of the Exchequer*) said—

92. Capital includes money and past profits.—(contd.)

"If any accumulating profits have actually been invested in fixed plant, of course that plant will be allowed for; but where accumulating profits have not been so definitely allocated to capital and may be divided at the end of the year by way of dividend, it would be very improvident to treat those accumulating profits as fixed capital. The accumulating profits must be definitely allocated to fixed capital, or else they must wait until the end of the year until the accounts are made up."

In the course of the Debate on the Finance (No. 2) Act, 1915, Mr. Montagu (*Financial Secretary to the Treasury*) said—

"Capital does not include money which is held for division or for dividends."

A private trader or firm may, for the sake of convenience, include in the Balance Sheet a bank deposit or other form of accumulated profits not all required for use in the business. It should not be difficult to determine what part, if any, of such profits is employed in the business, having particular regard to the permanence or otherwise of the deposit throughout the period.

See Rule 44 in this connection.

Irish Catholic Church Property Insurance Company v. Commissioners of Inland Revenue (1918). It was held that in the case of a company carrying on fire and employers' liability insurance business, accumulated profits placed to reserve may not be regarded as capital employed in the business.

(For other decisions in this case, see Rules 39 and 88.)

93. Capital: assets acquired by purchase.

93. In estimating capital, assets acquired by purchase are to be taken at their purchase price (less any part thereof which has not been paid), subject to proper deductions for wear and tear or replacements. When the price was not paid in cash it must be taken as the value of the consideration given at the time of purchase.

The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(a) *so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part III,* 1.)

Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired. (*Fourth Schedule, Part III,* 3.)

In determining what deduction should be made for " wear and tear or replacements," it is necessary to consider what the *proper* deduction is. The word italicized might conceivably be read in accordance with the Income Tax Regulations dealt with in Rule 60. But these regulations can only apply, if at all, in pursuance of Rule 39, which makes applicable the rules of the Income Tax Act. These rules are made applicable, however, to the *computation of profits* only. The matter under review is the computation of *capital*, a matter for which

93. Capital: assets acquired by purchase.—(*contd.*)

the Income Tax rules do not provide. It must, therefore, be concluded that a *proper* deduction for wear and tear is not necessarily what has been found proper under the Income Tax Acts. In theory this is unfortunate, having regard to the acceptance of the Income Tax rules for purposes of estimating profit. (Rule 39.) In practice, however, little difficulty is experienced.

In considering what deduction for depreciation would be considered proper for a computation of the capital employed in a business, the ultimate purpose of the computation should be borne in mind. That purpose is the ascertaining of what profit may be expected to be produced by the capital in question. The depreciation for which allowance should be made is clearly the wastage which has had to be made good, in order that the profit might be maintained. As regards assets in respect of which Income Tax allowances are made (" machinery and plant "), those allowances would in most cases be proper for Excess Profits Duty purposes also. But deductions must also be made for assets other than " machinery and plant." What other assets ? In all probability, assets, the wastage of which has had to be made good, in order to maintain, in the year under review, the profits which they would produce in their condition at the time of purchase. The exact list must depend on the peculiar circumstances of each business.

Suppose, however, that the wastage has not been made good and that, in consequence, the profits

93. Capital: assets acquired by purchase.—(*contd.*)

derived therefrom have not been maintained. In this case, the deduction for wear and tear must obviously have relation to the amount by which the profits might reasonably be expected to have diminished.

It need hardly be pointed out that the restrictions indicated above are to the advantage of the taxpayer, inasmuch as they serve to maintain the valuation of his assets at a high level. This usually reduces the amount of duty payable.

See Rule 62 regarding Depreciation of Buildings.

In **Bolands, Ltd., v. Inland Revenue** (*Irish Court of Appeal,* 1918) the following matter was decided: In 1888 the company had issued shares as part purchase price for its undertaking. Within a few months the shares were quoted at a premium. The company contended that the assets should, for purposes of computing capital, be assumed to have been acquired for a consideration larger than the par value of the shares.

It was held that the Company was wrong.

Master of the Rolls (*Ireland*) *:* "The appellants contended that the face value was under the real value, and in support of that contention, proved that, at some time after the company was floated, its shares were dealt with on the Dublin Stock Exchange at a premium. But it was for the Commissioners to determine whether that was reliable evidence or not, or whether it was any evidence. My opinion is that it was absolutely no evidence of the real value of the shares, because everyone

93. Capital: assets acquired by purchase.—(*contd.*)

knows that Stock Exchange prices are, in many cases, made, not by reference to the real intrinsic value of the property which the shares represent, but by other considerations such as present themselves to speculative minds. But I do not think that this is a case at all in which merely unsatisfactory evidence was given by the party who wanted to prove that the shares had a greater value than their face value. I think there was evidence on the other side which showed clearly that the shares bore nothing more than their face value. In the first place, we have the yearly balance sheets in which the assets are valued on the basis that the face value of the share capital is the true capital; then in the agreement between the vendor and this company, shares issued as part of the purchase price of the business are estimated at £5 each (their face value). However, the Commissioners have found, as a fact, that the shares had no greater value than their face value ; they were the tribunal to determine questions of fact, and having had evidence on which they were entitled to act, we had no jurisdiction to disturb their finding on the issue raised."

Bowden Brake Co., Ltd., v. The Commissioners of Inland Revenue (*King's Bench Division,* 1919). In 1901 the company purchased a licence for the manufacture and sale of a patent brake. In 1911 the chief letters patent expired, and the purchase price of the licence was finally written off in the company's books by March, 1914. For Excess

93. Capital: assets acquired by purchase.—(*contd.*)

Profits Duty purposes, the company sought to say that a goodwill, which still remained as an asset, was acquired with the purchase of the right. It was held that the documents did not support this claim and that, as such goodwill as the company had was not acquired by the purchase, it must be valued in accordance with its value at the time it became an asset. The goodwill in question was the result not of purchase but of growth, and no value could be attached to it for Excess Profits Duty purposes.

94. Capital: assets not acquired by purchase.

94. In estimating capital, assets which have not been acquired by purchase are to be taken at their value when they were acquired, subject to any proper deductions for wear and tear or replacement.

The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(c) *So far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.* (*Finance* (*No.* 2) *Act*, 1915, *Fourth Schedule, Part III*, 1.)

The ascertainment of value in such a case must, of course, depend on the evidence which is available. (See the notes on the preceding rule.)

95. Capital debts.

95. In estimating capital, debts owing to the concern are to be included. Their value is declared to be their nominal amount less the amount of any allowance made therefrom for Income Tax purposes.

95. Capital debts.—(*contd.*)

The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(b) *So far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for Income Tax purposes.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part III,* 1.)

As a general rule, this direction will result in debts being valued at the amount appearing in the Balance Sheet, plus the amount of the Bad Debts Reserve if (and only if) such Reserve is hidden in the Balance Sheet by being deducted from the true "Sundry Debtors." Such Reserve will not have been allowed under the Income Tax Acts.

Debts concerning which there is much doubt (*e.g.*, from alien enemies) might well be left over until the end of the war. If the Revenue elect to make an assessment on the assumption that they are good, satisfactory evidence of their extreme doubtfulness would no doubt secure acquiescence in the partial or total postponement of payment of duty. (See also Rule 58.)

In **Bolands, Ltd., v. Inland Revenue** (*Irish Court of Appeal,* 1918) it was held that debentures should not be regarded as capital.

96. Capital: trading losses in six pre-war years.

96. For the purpose of computing the Percentage Standard (*Rule* 24), the existing capital may be increased by the amount of decreases in capital by reason of trading losses during the last six pre-war years.

96. Capital: trading losses in six pre-war years.—(*contd.*)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, 1916, *the following provisions shall have effect:*

Where the Commissioners are satisfied that during the last six pre-war trade years, owing to trading losses,

(a) *any former assets of any trade or business have ceased to form part of the assets of that trade or business, or*

(b) *the money borrowed in respect of the trade or business or the debts of the trade or business have increased,*

the Commissioners shall, for the purpose of ascertaining the capital of the trade or business in any case where the percentage standard is adopted, compute the capital as though there had been no such loss of assets or increase of borrowed money or debts. (*Finance Act,* 1917, *s.* 26 (6).)

97. Capital: goodwill of vendor.

97. Where the shares of a company are mainly held by the person who owned the business before it became a company, the goodwill of the business is not (except in special circumstances) to be reckoned as capital for Excess Profits Duty purposes.

. . . *but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be* *material assets.* (*Finance* (*No.* 2) *Act,* 1915, *Fourth Schedule, Part III,* 3.)

97. Capital: goodwill of vendor.

This rule has special reference to private companies, whose goodwill might be set down at whatever value the proprietor pleases.

Patents and secret processes are not within this rule.

The Commissioners of Inland Revenue are made judges of what constitute the special circumstances in which exception may be made. The Parliamentary reports make it clear that goodwill which has been *bona fide* purchased is to be regarded as part of the capital of the concern: also that consideration will be shown where the goodwill of a private company has been valued at its ascertained market value at the time of the formation of the company.

98. Capital: allowance for increase.

98. Where the capital has increased, a deduction is made from the profits of the accounting period equivalent to—

the statutory percentage per annum on the amount of the increase, for the purposes of any accounting period ended on or before 31st December, 1916, or—

3 per cent. more than the statutory percentage per annum on the amount of the increase, for the purposes of any accounting period ending after 31st December, 1916, or—

5 per cent. more than the statutory percentage per annum on the amount of the increase for the purposes

98. Capital: allowance for increase.—(*contd.*)

of any accounting period ending after 31st December, 1919.

Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the capital has been increased for the whole accounting period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period. (*Finance* (*No.* 2) *Act*, 1915, *s.* 41 (1).)

For the purposes of this section, capital shall be taken to be increased or decreased,[1] *as the case may be, where the pre-war standard is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated.* (*Finance* (*No.* 2) *Act*, 1915, *s.* 41 (3).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December nineteen hundred and sixteen, the following provisions shall have effect—

(1) *In ascertaining the deduction to be made from the profits of the accounting period in respect of increased capital, ... three per cent. shall be added to the statutory percentage per annum; and, accordingly,*

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[1] See Rule 99 as to decreased capital.

98. Capital allowance for increase.—*(contd.)*

in subsection (1) *of section forty-one of . . . . the principal Act, the expression " statutory percentage " shall be taken to mean the statutory percentage as so increased.* (*Finance Act*, 1917, s. 26 (1).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and nineteen, section twenty-six of the Finance Act, 1917, *shall have effect as though in paragraph* (1) *" five per cent. " were substituted for " three per cent."* (*Finance Act*, 1920, s. 47.)

The point of this allowance is that, when more capital is employed in the accounting period (or a part of it) than in the pre-war trade years, a portion of the increased profits is assumed to have arisen solely on account of the extra capital. The portion which has so arisen is ignored in computing the taxable excess (*i.e.*, it is deducted from the profits of the accounting period). Thus—

Profit to 31st January, 1912 . .		£23,000
Capital . . .	£300,000	
Profit to 31st January, 1913 . .		22,000
Capital . . .	300,000	
Profit to 31st January, 1914 . .		24,000
Capital . . .	300,000	
Profit to 31st January, 1915 . .		30,000
Capital . . .	310,000	

$$\text{Pre-war Standard of Profits} = \frac{£24,000 + 23,000}{2}$$

$$= £23,500$$

98. Capital: allowance for increase.—(*contd.*)

At first sight, the company whose figures these are might be assumed to have made excess profits to the amount of £6,500. But part of the £30,000 may reasonably be taken to have arisen from the £10,000 additional capital employed. The Act prescribes that the profit so arisen shall be taken to be the statutory percentage (ordinarily 6 per cent. for a company, but see also Rules 26 to 29), or 3 per cent. above the statutory percentage, according to period, on the additional capital. *For purposes of comparison,* therefore, in this example £600 of the £30,000 is to be ignored. The computation will be as follows—

	£
Profit of the Accounting Period to 31st January, 1915 . . .	30,000
Deduct 6% on increased capital—£10,000	600
	29,400
Standard of Profits . . .	23,500
Excess . .	5,900
Allowance . .	200
	2)5,700
	£2,850

If the capital had been increased at 1st August, 1914 (half-way through the accounting period), the

98. Capital: allowance for increase.—(*contd.*)

deduction would be half that shown above (*i.e.*, 3 per cent. on £10,000 or 6 per cent. on £5,000).

It will be observed that the additional 3 per cent. allowance operates as regards the whole of any accounting period ending after 31st December, 1916, but in respect of no part of any accounting period ended on or before that date. Thus—

Percentage Standard : 6 % of £100,000 = £6,000.

Capital added during—	£
Year to 30th September, 1915 .	10,000
,, ,, ,, 1916 .	20,000
	£30,000

Capital in use during year to 30th September, 1917 . . . . £130,000

Allowance in respect of increased capital—
= 9 % of £30,000 = £2,700

Similarly, the allowance at 5% additional operates for the whole of any period ending after 31st December, 1919.

In ascertaining whether capital has increased comparison is made between the capital of the accounting period and—

(*a*) *when the standard of profits is a profits standard*—the average capital of the period on

98. Capital: allowance for increase.—(*contd.*)

the profits of which the standard of profits has been calculated:

(*b*) *when the standard of profits is a percentage standard*—the capital on which such percentage standard has been based.

The capital of the accounting period is for this purpose taken at the average amount thereof during such period. If the accounting period is not a full year, the deduction made will be proportionately less than the full 6 per cent. (or 7 per cent.) on the increase.

It should be remembered that the adjustment referred to is only required to be made in order to ensure a fair comparison. In businesses in which it would be difficult to calculate the average capital throughout a year (ignoring the profits of that year), it is likely that the comparison of the initial capitals of each period would meet the point. Thus—

Capital at 1st December, 1910 .	£4,000
Profit to 30th November, 1911 .	800
Capital at 1st December, 1911 .	4,150
Profit to 30th November, 1912 .	900
Capital at 1st December, 1912 .	4,200
Profit to 30th November, 1913 .	750
Capital at 1st December, 1913 .	4,200
Profit to 31st October, 1914 . .	1,000

$$\text{Standard of Profit } \frac{£900 + 800}{2} = £850$$

98. Capital: allowance for increase.—(*contd.*)

Assumed average capital in pre-war trade years selected as the basis of the standard $\left.\right\}$ $\dfrac{£4{,}000 + 4{,}150}{2}$ =	£4,075
Assumed average capital in Accounting Period	4,200
Increase . .	125
Profits of Accounting Period (11 months)	1,000
Deduct $\frac{11}{12}$ of 7 % (say) of £125 . .	8
	992
Standard of Profit, £850 ; $\frac{11}{12} \times$ £850 =	780
Excess . . .	212
Allowance £200 : $\frac{11}{12} \times$ £200 . =	183
	2) 29
Duty (at 50 %) .	£ 14

It may be remarked that "capital" for purposes of this rule is "capital employed in the business." It is calculated in accordance with the earlier rules of the present chapter.

A closing illustration will be given with regard to a concern in which the standard of profits is a percentage standard. Thus—

98. Capital: allowance for increase.—(*contd.*)

Profits for year to 30th April, 1915 . £8,000

Percentage standard adopted = 6% on £100,000 (the capital on 30th April, 1914) = £6,000.

Capital increased to £120,000 on 1st August, 1914, on which day a new factory came into use.

Capital increased to £126,000 on 1st March, 1915, on which day additional machinery came into use.

Average capital in the year to 30th April, 1915

$$= (£100,000 \times \tfrac{3}{12}) + (£120,000 \times \tfrac{7}{12}) + (£126,000 \times \tfrac{2}{12})$$
$$= £116,000$$

Computation—	£
Profits of Accounting Period . .	8,000
Deduct 6% on increased capital (£16,000)	960
	7,040
Standard of Profits	6,000
Excess . .	1,040
Allowance . .	200
	2)840
Duty (at 50%) .	£ 420

99. Capital: adjustment for decrease.

99. Where the capital has decreased, an addition is made to the profits of the accounting period equivalent to the original statutory percentage per annum on the amount of the decrease.

This percentage is increased neither with the increased percentage granted to concerns other than companies

99. Capital: adjustment for decrease.—(*contd.*)

(*Rule* 26), nor with the increased percentage granted in respect of increased capital (*Rule* 98).

Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period. (*Finance* (*No.* 2) *Act,* 1915, s. 41 (2).)

For the purposes of this section, capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated. (*Finance* (*No.* 2) *Act,* 1915, *s.* 41 (3).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and sixteen, the following provisions shall have effect—

> *The statutory percentage shall, in the case of a trade or business not carried on or owned by a company or other body corporate, be taken to be eight per cent. instead of seven per cent.; and, accordingly, subsection* (2) *of*

99. Capital adjustment for decrease.—(*contd.*)

section forty of the principal Act shall have effect as though eight per cent. were substituted for seven per cent.:

Provided that nothing in this provision shall affect the amount of the statutory percentage for the purposes of subsection (2) *of section forty-one of the principal Act.* (*Finance Act*, 1917, s. 26 (2).)

This rule is the direct converse of the rule which precedes it. It hangs on the principle that more profit would have been made had not the capital employed decreased, and that for purposes of comparison an amount shall be added to the profits of the accounting period to make good this specially-caused diminution. Thus—

Profit to 31st May, 1912 . .	£8,000
Average capital	100,000
Profit to 31st May, 1913 . .	7,500
Average capital	99,000
Profit to 31st May, 1914 . .	7,800
Average capital	98,000
Profit to 31st May, 1915 . .	12,000
Average capital	97,000

$$\text{Pre-war Standard of Profits } \frac{\pounds 8{,}000 + 7{,}800}{2}$$

$$= \pounds\ 7{,}900$$

$$\text{Average “pre-war” capital} = \frac{\pounds 100{,}000 + 98{,}000}{2}$$

$$= \pounds 99{,}000$$

99. Capital adjustment for decrease.—(*contd.*)

	£
Profit of Accounting Period . .	12,000
Add 6 % on (£99,000 – £97,000=£2,000) =	120
	12,120
Pre-war Standard	7,900
Excess . .	4,220
Allowance . .	200
	2)4,020
Duty. . .	£2,010

The principles on which the decreased capital is ascertained, and on which a proportionate adjustment only is made where the accounting period falls short of a year, are precisely those explained under the preceding rule regarding increased capital, and it is needless to repeat them here.

100. Capital not remunerative.

100. Where capital was introduced after 1st August, 1911, but was unremunerative or not fully remunerative until the accounting period, an appropriate addition may be made to the profits standard.

As regards accounting periods ending after 31st December, 1916, this rule applies to capital introduced after 1st August, 1908.

Where any capital employed in a trade or business which was so employed for the first time within three years before the first day of August, nineteen hundred and fourteen,

100. Capital not remunerative.—(contd.)

has only commenced to be remunerative or fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital up to the statutory percentage, as the case may be, shall be added to the profits standard. (*Finance* (*No.* 2) *Act*, 1915, *s.* 41 (4).)

In the application of Part III of the principal Act to Excess Profits Duty for any accounting period ending after the thirty-first day of December, nineteen hundred and sixteen, the following provisions shall have effect—

> *Six years shall be substituted for three years in subsection* (4) *of section forty-one of the principal Act* (*which provides for the adjustment of Excess Profits Duty in respect of unremunerative capital*). (*Finance Act*, 1917, *s.* 26 (7).)

The principle underlying this rule is the same as that under which a deduction is made from the profits of an accounting period in which new capital has come into use (Rule 98). In the present case, the capital concerned is not new, but it is only now becoming fully remunerative, *i.e.*, is only now producing the " statutory percentage " (Rule 24). An addition to the profits standard is equivalent to a deduction from the profits of the accounting period. Where a percentage standard is adopted, there is no occasion for this allowance.

The amount to be added to the profits standard is the amount by which the income arising from the capital in question falls short of the statutory

100. Capital not remunerative.—(*contd.*)

percentage. Thus, in the case of a company entitled to the normal statutory percentage (6 per cent.), the amount added should be 6 per cent. on the capital concerned, less the income which actually arose from that capital. If a new factory was opened on 1st January, 1913, at a cost of £100,000, and in the year to 31st December, 1913, that £100,000 earned £4,000, the addition to the profits standard would be £2,000 (£6,000 - £4,000) ÷ 2 = £1,000. The £2,000 is halved because the profits of 1913 have been averaged with another pre-war year's profits (in computing the profits standard), and in the latter year there was no increased capital of £100,000, and of course no corresponding earnings. For purposes of the pre-war standard, therefore, the increased capital is £50,000, and it has earned £2,000. The statutory percentage on £50,000 (6%) would yield £3,000, and the addition to the standard under Rule 100 is £1,000. In these circumstances an allowance would also be claimed under Rule 98.

In the case of a concern other than a company, the increased statutory percentages for periods ending after 31st December, 1916 (Rule 26), should be taken into account.

CHAPTER XV

Special Provisions Regarding Shipping and the Purchase and Sale of Ships

1915 LEGISLATION—SHIPS BOUGHT AND SOLD—1916 LEGISLATION—VENDOR'S STANDARD FOR SHIP SOLD TO ATTACH TO PURCHASER—APPORTIONMENT OF STANDARD BETWEEN SHIPS—ADJUSTMENT FOR DIFFERENCES IN LOANS (VENDOR'S AND PURCHASER'S)—DEPRECIATION AND OBSOLESCENCE ALLOWANCES RESTRICTED — INFORMATION REQUIRED FROM VENDOR—1917 LEGISLATION—WITHDRAWAL OF DEFICIENCIES ALLOWANCE FROM 1ST JANUARY, 1917—APPORTIONMENT OF PROFITS—COMPOSITE BUSINESS.

THE special Excess Profits Duty legislation with regard to ships and shipping has proceeded in three stages.

(1) 1915. The provision set out in Rule 47 is not peculiar to shipping but is in practice almost limited in its application to shipping. The general effect is to prevent an undue inflation of capital by reason of the abnormal increase in the selling values of ships. Thus—

Ship purchased in 1910 for . .	£50,000
Ship sold in 1915 for . . .	100,000
New ship purchased in 1915 . .	100,000

The result of this transaction is virtually the exchange of one ship for another of equal value.

Yet without special provision the result for Excess Profits Duty purposes is the substitution among the assets of a £100,000 item for a £50,000 item. The rule in question prevents this, by requiring the variation in capital to be limited to the difference between the selling price of the old ship and the purchase price of the new ship. (In this case the difference is NIL.)

(2) **1916.** The provisions of the Finance Act, 1916, on this subject are set out in Rules 101 to 105. They apply wherever a ship has been sold since 4th August, 1914, **if the Commissioners of Inland Revenue so require.** In a memorandum issued by the Ministry of Shipping it is stated that, " speaking generally, it may be said that the section is applicable where the ship is purchased from another British shipowner, but not where it is purchased from a shipbuilder."

These also are intended to deal with the special circumstances arising when ships are sold at the high prices now prevailing. The large sums accruing to the vendors are not ordinarily assessable to Income Tax and Excess Profits Duty; where they are assessable the special rules under consideration do not apply.

The general effect of the rules is to secure from the purchasers as much Excess Profits Duty as would have been payable by the vendors had no sale taken place and had the vendors made the profits which the purchasers in fact made.

Rule 47 (see above) does not apply where the Commissioners of Inland Revenue have required the application of Rules 101 to 105. In practice the latter rules are taken to apply almost automatically to cases in which shipping concerns buy or sell ships.

(3) 1917. Rules 106 to 108 withdraw the allowances for deficiencies or losses (Rule 5) arising after 31st December, 1916, except such deficiencies as would arise had the percentage standard been adopted. These Rules are incidental to the extensive requisitioning of ships by the Government.

1916. Computation "if the Commissioners of Inland Revenue so require."

Northern Navigation Co., Ltd., v. The Commissioners of Inland Revenue (*Court of Session of Scotland,* 1919). In this case the Commissioners of Inland Revenue, in computing the liability to Excess Profits Duty, declined to apply the provision of Section 47 of the Finance Act, 1916 (Rules 101 to 105 of this book). The company appealed to the General Commissioners of Income Tax, who decided that they had no jurisdiction in the matter. The opinion of the General Commissioners was confirmed in the Court of Session.

Lord President: "Section 47, in my judgment, is only applicable when the Commissioners of Inland Revenue so require, and in this case they have refused to apply it."

101. Ships: vendor's standard continues.

101. The Standard of Profits which attached to the ship in the hands of the vendor (profits standard or percentage standard, as it happened to be) shall continue to be attached to the ship while in the new ownership.

101. Ships: vendor's standard continues.—(*contd.*)

Where any ship has been sold since the fourth day of August, nineteen hundred and fourteen, in such circumstances that the profits of the sale are not the profits of a trade or business, the following special provisions shall, if the Commissioners of Inland Revenue so require, be applied in the computation of the liability to Excess Profits Duty in respect of the profits arising from the use of the ship—

(a) *The pre-war standard of profits of the purchaser as respects the ship shall, where the standard of the trade or business of the vendor is a profits standard, be calculated by reference to the profits arising from the use of the ship during the pre-war trade years, and shall be ascertained in accordance with the provisions of the principal Act, but calculated, where necessary, as if the use of the ship were a separate business; and where that standard is a percentage standard the pre-war standard of profits as respects the ship shall be the same as if the ship had not been sold, or, in the case of a ship which was used for the first time after the fourth day of August, nineteen hundred and fourteen, shall be calculated by reference to the capital represented by the ship at the date when it was first used.* (*Finance Act*, 1916, s. 47.)

It might be to the advantage of the new owner to revert to the percentage standard, in place of the profits standard selected by the vendor (or *vice versa*), but no such change is permitted. See later rules as regards the allowance for increased capital, etc.

The new owner might have selected the percentage standard for his existing business, and might find that his newly purchased ship has been subject to the profits standard (or *vice versa*). The difference must continue.

102. Ships: apportionment of vendor's standard.

102. If the vendor owned other ships, so that the ship sold was joined with others as regards the standard of profits, that standard must be apportioned between the ship sold and the rest of the ships.

(b) *For the purpose of estimating separately the profits arising from the use of the ship, an apportionment shall, where necessary, be made of the total profits of the trade or business in which the ship has been used, regard being had to the earnings of the ship as compared with the earnings of the other assets employed in the trade or business:*

Any appeal under subsection (5) *of section forty-five of the principal Act, so far as it involves any question of an apportionment under this provision, shall be to the Special Commissioners.* (*Finance Act*, 1916, *s.* 47.)

Also see (*a*), page 301.

Percentage Standard.

If the standard was a percentage standard, the standard to be apportioned to the ship sold may be based on the total cost of the ship (to the vendor), less depreciation allowed to him. The fact that his capital was less than the aggregate values of his ships, by reason of loans, etc., is immaterial, as adjustments must be made for variations in this respect (Rule 103). The apportionment would be as follows—

Vendor's Percentage Standard £8,750, based on capital as below—

Ship A:	£	£	£
	Total Cost, 48,000;	Deprec'n., 12,000;	Value, 36,000

102. Ships: apportionment of vendor's standard.—(*contd.*)

Ship B : £ £ £
Total Cost, 64,000 ; Deprec'n., 10,000 ; Value, 54,000
Ship C :
Total Cost, 50,000 ; Deprec'n., 15,000 ; Value, 35,000
Ship D :
Total Cost, 54,000 ; Deprec'n., 22,000 ; Value, 32,000

	157,000
Value of other assets used in the business	12,000
	169,000
Loans and Debts . .	44,000
Capital . .	125,000
Percentage standard at 7 % .	£8,750

If Ship D is sold (say for £100,000, but this is immaterial), the Percentage Standard will be apportioned as follows—

Ship . .	£32,000	@ 7 % =	£2,240
Rest of concern	£93,000	@ 7 % =	£6,510
	£125,000		£8,750

The vendor's capital is likely to be much more than £93,000 in future. He would obtain an allowance under Rule 98, as would also the purchaser.

Profits Standard.

The Vendor's Standard of (say) £16,000 may have been arrived at as follows—

102. Ships: apportionment of vendor's standard.—(*contd.*)

1912 . .	Profit	£15,000
1913 . .	,,	£17,000
		2)32,000
		£16,000

The 1912 and 1913 profits may have arisen thus—

	1912.	1913.
Ship X. Profits on Voyages	£7,000	£9,000
,, Y. ,, ,,	3,000	2,500
,, Z. ,, ,,	7,000	8,000
	17,000	19,500
less Various trading expenses	1,500	2,000
,, Interest . . .	500	500
	£15,000	£17,000

It would in most cases be reasonable to apportion the Profits Standard on some such basis as the following—

Ship X (sold) $\frac{7,000 + 9,000}{16,500 + 19,000} = \frac{16,000}{35,500}$ of Standard

$\frac{16,000}{35,500} \times £16,000 = £7,211$

Remaining business	8,789
	£16,000

The profits £16,500, £19,000 (and therefore £7,211) are before charging interest. £8,789 is after charging all interest, as none is charged in £7,211.

102. Ships: apportionment of vendor's standard.—*(contd.)*

The capital taken as attaching to Ship X (for purposes of the adjustment prescribed under Rule 103) would be its total cost to the vendor, less depreciation allowances thereon to him. The capital attaching to the rest of the business (for purposes of adjustments under Rule 103) would be his capital as previously computed less that now assumed to attach to Ship X. In this connection it is the average capital over the " Standard Period " which is in point.

103. Ships: capital adjustments.

103. The adjustments for alterations in capital required under Rules 98 to 100 do not apply. Any differences (between the apportioned capitals (*Rule* 102) and actual capitals) which arise out of variations in loans, etc., are to be met by the necessary adjustments. Differences arising out of the purchase or sale are to be disregarded. . . . *and the pre-war standard of profits of the trade or business of the vendor and of the purchaser shall respectively be reduced and increased as the case may require, with any adjustments which may be necessary to meet the case of borrowed money or unpaid purchase money or other similar matters.* (*Finance Act*, 1916, s. 47 (*a*).)

In the application of section forty-one[1] *of the principal Act to any trade or business whose pre-war standard of profits has been determined or adjusted under this section any increase or decrease of capital attributable to the purchase or sale of the ship shall be disregarded, and where any such determination or adjustment has taken place both in respect of the sale of a ship and the purchase of another ship for the same trade or business, paragraph* 6

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[1] Rules 98 to 100.

103. Ships: capital adjustments.—(contd.)

of Part II[1] *of the Fourth Schedule to the principal Act shall not apply.* (*Finance Act*, 1916, *s.* 47 (*e*).)

It will be noted that Rule 47 does not apply where the Rules referred to in this chapter come into operation.

The effect of Rule 103 may be illustrated as follows. Company owns ships P, Q, R and S. Its Standard of Profits is £40,000. The company sells Ship P, and the Standard is apportioned (under Rule 68), thus—

	£
Ship P . . .	8,000
Rest of business . .	32,000

In the examples given in illustration of Rule 102, all loans and other charges have been taken to refer to the "rest of business." This appears the best method, as the allocation of a part of the loan to one particular ship might be a difficult matter in itself and would entail a more complicated adjustment under Rule 103.

It is immaterial for the present purpose whether the £40,000 was a Percentage Standard or a Profits Standard.

Rules 98 to 100 require adjustments in respect of differences between the capital of the standard period and the capital of the accounting period under review. These rules do not apply where the rules of this Chapter are in point, but a corresponding adjustment must be made, which must nevertheless ignore alterations in capital values directly

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[1] Rule 47.

103. Ships: capital adjustments.—(contd.)

attributable to the transfer of the ship. While an allowance must be made, in a normal case, for the increase of a man's capital from £50,000 to £120,000 (Rule 98), no such allowance may be made on the ground that a ship represented £50,000 capital to the vendor and £120,000 to the purchaser.

The £8,000 Standard apportioned to Ship P is assumed to have been computed on the assumption that all interest charges related to Ships Q, R and S. It follows that £8,000 is the Standard of Ship P free of loans. Its capital value (at the standard period) was, therefore, its total cost (say, £45,000) less depreciation (say, £10,000), *i.e.*, £35,000. If this is not its capital value in the hands of the purchaser at the opening of the accounting period concerned (ignoring any increase in consideration of the large purchase price), he can claim or must submit to an adjustment. Thus—

Standard £8,000 : Capital £35,000

(N.B.—If the £40,000 referred to above was a Profits Standard, the Ship P Capital £35,000 would be the average over the two years selected for the Profits Standard. If the £40,000 was a Percentage Standard, the Ship P Capital £35,000 would be the capital at the end of the last pre-war trade year. The £35,000 has, of course, been determined under Rule 100 by reference to Rules 20 to 25.)

Capital additions to Ship P since the Standard period: £2,000 (replacement of machinery).

103. Ships: capital adjustments.—(*contd.*)

Depreciation allowances since the Standard period : £6,000.

Present Capital Value : £35,000 + 2,000 − 6,000 = £31,000.

Money borrowed by the purchaser and secured on Ship P : £10,000.

Capital value to the Purchaser £31,000 − £10,000 = £21,000.

An adjustment is required under Rule 103 in respect of the decrease in capital from £35,000 to £21,000 (difference £14,000). This decrease is made up of £10,000 loan and £4,000 normal decrease. The latter will be met by deducting 6% on £4,000 (Rule 99) from the Standard of £8,000. The former will occasion the adjustments " which may be necessary to meet the case." The purchaser's profits will be reduced by interest on the £10,000, and it is probable that the case would be met by reducing the standard by the same amount.

£8,000 − 6% on £4,000 − 5% (rate of interest) on £10,000 = £7,260, which is the purchaser's standard for the ship until the next accounting period, when a similar computation will be necessary.

We now revert to the vendor company. It has been left with a Standard of £32,000 for "rest of business." We will assume that its original Standard of £40,000 was arrived at after consideration of the fact that it had borrowed £100,000 at 5%. As explained above, none of that loan or the interest thereon has been taken to attach to Ship P. At the Standard Period the company stood (say) as follows :

103. Ships: capital adjustments.—(*contd.*)

	£
Capital Value of Ships P, Q, R and S	320,000
Other assets	30,000
	350,000
Loan	100,000
	250,000

At the commencement of the accounting period under review it stood thus—

	£
Capital Value of Ships Q, R and S	270,000
Other assets	30,000
	300,000
Loan (paid off)	*Nil*
	£300,000

(The £270,000 is £320,000 (as above), less £35,000 (Ship P), and less £15,000 subsequent depreciation of Ships Q, R and S.)

The company's capital has increased by £50,000, and but for these Rules an amount equal to 6%, 9% or 11% (according to the period—see Rule 98) thereon (£3,000) might be added to the Standard of £40,000, making it, say, £43,000.

It is more correct, however, that the standard should be increased by the amount of the interest formerly payable on the £100,000, and decreased by the £8,000 standard transferred (in respect of the £35,000). This accounts for a net increased capital of £65,000. Other matters have so operated that

103. Ships: capital adjustments.—(*contd.*)

the increase is £50,000 only, and, say, 6 % on £15,000 should accordingly be deducted from the standard. The vendor's standard for the period becomes—

£40,000 + £5,000 (interest on £100,000)
− 8,000 (standard, Ship P)
− 900 (6 % on decreased capital, £15,000)
= £36,100.

104. Ships: allowance for depreciation, etc.

104. In applying Rule 60 (allowance for depreciation) and Rule 65 (allowance for loss of capital through exceptional depreciation or obsolescence in consequence of the war) no allowance shall be made larger because the purchase price exceeds what was the capital value of the ship in the hands of the vendor.

Nothing in subsection (3) *of section forty*[1] *of the principal Act or in paragraph three*[2] *of Part I of the Fourth Schedule to the principal Act shall operate so as to enable the purchaser of the ship to obtain any greater relief than could have been obtained by the vendor if the ship had not been sold, other than relief in connection with expenditure by the purchaser on improvements or repairs.* (*Finance Act*, 1916, *s.* 47 (*d*).)

The allowance for depreciation is 4 % or 5 % on the total cost of the ship. A ship whose total cost up to the outbreak of war was £50,000 might easily be sold for £120,000. The depreciation allowance is to be 4 % or 5 % on £50,000 and not on £120,000.

The selling value of that same ship at the end of the war might be £80,000. If the "exceptional depreciation" allowance were based on the £120,000 value, a claim such as the following would lie—

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[1] Rule 65. [2] Rule 60.

104. Ships: allowance for depreciation, etc. —(*contd.*)

Value	£120,000
Depreciation allowances since purchase . . .	10,000
	110,000
Value at end of war . .	80,000
Further allowance due .	£30,000

By substituting the £50,000 for the £120,000, however, the claim is ruled out.

105. Ships: information from vendor.

105. The Commissioners of Inland Revenue may require the vendor to give such information to themselves and to the purchaser as they think necessary in order to enable these rules to be carried out.

The power to require returns under subsection (1) *of section forty-four of the principal Act shall include power for the Commissioners of Inland Revenue to require any vendor of the ship to give such information to them and to the purchaser as the Commissioners think necessary in order to enable the provisions of this section to be carried into effect.* (*Finance Act,* 1916, *s.* 47 (*c*).)

In the examples which appear above the statutory percentages (6 % and 7 %) have usually been taken. For accounting periods ending after 31st December, 1916, see Rules 26, 34 and 98.

1917 LEGISLATION

106. Ships: restricted deficiency allowance.

106. Duty continues to be payable in respect of any excess arising from the business of shipping, whether

108. Ships: restricted deficiency allowance.—(contd.)

before or after 1st January, 1917. But no allowance may be made (Rule 5) in respect of any loss or deficiency arising from such business after that date except for such deficiency as would arise had the percentage standard been adopted.

In computing the Excess Profits Duty of any trade or business which consists wholly or partly of the business of shipping the provisions of subsection (3) *of section thirty-eight of the principal Act* (*which relate to the repayment or setting off of duty on account of deficiencies or losses*) *shall not apply in relation to any deficiency or loss in any accounting period commencing on or after the first day of January, nineteen hundred and seventeen, and in the case of an accounting period which has commenced before that date but ends after that date, shall not apply in relation to so much of the deficiency or loss as may be apportioned under this Act to the part commencing on that date:*

Provided that—

(a) *where the shipping business is carried on merely as ancillary to the principal trade or business, the provisions of this section shall not apply;*

(b) *where the trade or business carried on does not consist wholly of shipping, and the part which does not consist of shipping is not merely ancillary to the business of shipping, such apportionment of any deficiency or loss shall be made by the Commissioners as may be necessary to limit the application of this section to such part of the business as consists of shipping; and*

(c) *if in any such accounting period as aforesaid there has been a loss or the profits have not reached the point which would have involved liability to Excess Profits Duty if the percentage standard had been adopted, the same amount shall, as respects the deficiency or loss or* *so much thereof as is affected by this section, be repaid or set off under subsection* (3) *of the said section thirty-eight as would have been repaid or set off if the percentage standard had been adopted.* (*Finance Act,* 1917, *s.* 22 (1).)

106. Ships: restricted deficiency allowance.—(*contd.*)

Any appeal under subsection (5) *of section forty-five of the principal Act on any question arising under this section shall be to the special Commissioners.* (*Finance Act,* 1917, *s.* 22 (2).)

In this section the expression " business of shipping " means the business carried on by an owner of ships, and for the purposes of this definition the expression " owner " includes any charterer to whom a ship is demised. (*Finance Act,* 1917, *s.* 22 (3).)

The reason for this Rule, as stated by the Chancellor of the Exchequer, may be summarized as follows. The shipping world had particularly good years of trade immediately before the war, the consequence being that the shipping pre-war standard is almost always very high. The years of war have brought extraordinarily large profits and considerable sums of Excess Profits Duty have become payable, though not so large sums as would have been payable had not the pre-war standard been so high. From dates early in 1917 practically all shipping has been requisitioned by the Government at rates which, says the Chancellor, will give a fair margin of profit, but probably not so large a profit as was earned in the years on the trading of which the pre-war standard was based. As 1917 profits will be less than the standard, repayment

106. Ships: restricted deficiency allowance.—(contd.)

will ordinarily be due under Rule 5, but the shipping trade is considered to have made and retained sufficient profits up to the end of 1916, and it is not proposed to swell those profits by repaying part of the duty paid for periods prior to 1917. Therefore, the Government decided, not as a matter of taxation but as a part of its requisitioning policy, to abrogate Rule 5 so far as are concerned any deficiencies or losses arising from the commencement of 1917. In the course of debate the Chancellor agreed to make an allowance under Rule 5 in any case in which a deficiency would have arisen had a percentage standard been adopted (Rule 24).

107. Ships: apportionment of profit.

107. Where the 1st January, 1917, does not constitute the commencement of an accounting period, the profit of the period covering that date must be apportioned by reference to the number of months, or fractions of months, which fall before and after the said 1st January, 1917.

See section set out after Rule 104; also the following—

Where part of an accounting period or of an accounting year, or of any period in respect of part of which munitions Exchequer payments are chargeable, is after, and part before, the beginning of the first day of January nineteen hundred and seventeen, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which munitions Exchequer payments are chargeable, shall be apportioned *between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively.* (*Finance Act*, 1917, *s.* 27.)

107. Ships: apportionment of profit.—(contd.)

108. Where a shipping business is only part of the business which is carried on—

108. Ships: composite business.

(*a*) if such part is carried on merely as ancillary to the other (which is the principal) business, the restriction in Rule 106 does not apply ;

(*b*) if the non-shipping portion of the business is ancillary to the shipping portion, the restriction in Rule 106 applies to the entire business ;

(*c*) if neither (*a*) nor (*b*) apply, the Commissioners shall apportion any deficiency or loss so as to allow the portion not arising from the shipping business.

See section set out after Rule 106.

Under (*a*) we may cite the case of a manufacturing company which has purchased a ship to bring its raw material from abroad. Under (*b*) would fall the case of a shipping company which owned a repairing yard, mainly for its own use, but also for the occasional use of others when circumstances permitted. Under (*c*) there would fall a company which had two independent businesses, shipping and (say) shipbuilding.

Appeals under Finance Act, 1917, s. 22.

It will be seen that this section requires appeals thereunder to be heard by the Special Commissioners. See Rule 116 as regards appeals generally.

CHAPTER XVI

Returns, Assessments, Appeals, and General Procedure

NOTICE TO BE GIVEN—RETURNS AND OTHER PARTICULARS REQUIRED—COMPANY IN LIQUIDATION—ASSESSMENT, PAYMENT, AND COLLECTION—PAYMENT IN WAR STOCK, ETC.—PERSONS ASSESSED—FIRMS—COMPANIES—INFANTS—LUNATICS—PERSONS RESIDENT ABROAD—APPEALS AND HIGH COURT CASES—PENALTIES—SECRECY—USE OF AND ACCESS TO DOCUMENTS BY INSPECTOR OF TAXES—FORMS USED—ERRORS—REGULATIONS MADE BY COMMISSIONERS OF INLAND REVENUE.

109. Notice of liability.

109. Persons chargeable (including liquidators of companies) are required to give notice within two months after the termination of the accounting period for which a charge should be made unless they have given notice on a previous occasion.

It shall be the duty of every person chargeable to Excess Profits Duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the thirty-first day of January nineteen hundred and sixteen, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to Excess Profits Duty, to give notice of the fact to the Commissioners of Inland Revenue. (*Finance* (*No.* 2) *Act,* 1915, *s.* 44 (2).)

Any notice required to be given to the Commissioners *of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business.* (*Regulation No.* 12, *Finance* (*No.* 2) *Act*, 1915, *s.* 45 (7).) **109.** Notice of liability.—(*contd.*)

It shall be the duty of every person chargeable to Excess Profits Duty under Part III of the principal Act, as extended by this Act, if he has not previously given notice of his liability to be charged with Excess Profits Duty in respect of any accounting period, to give notice to the Commissioners of Inland Revenue before the expiration of two months after the termination of any accounting period in respect of which he is chargeable, or if the accounting period terminated before the passing of this Act, within one month after the passing of this Act. (*Finance Act*, 1916, s. 45 (3).)

It shall be the duty of every person chargeable to Excess Profits Duty, if he has not previously given notice of his liability to be charged with Excess Profits Duty in respect of any accounting period, to give notice to the Commissioners within two months after the termination of any accounting period in respect of which he is chargeable, or, if the accounting period terminated before the passing of this Act, within one month after the passing of this Act.

If any person fails to give the notice required by this provision he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor. (*Finance Act*, 1917, *s.* 20 (3).)

But see Rule 15 as regards a concern which, by reason of being unable to pay its debenture-holders

109. Notice of liability.—(*contd.*) or creditors, is being carried on by a liquidator, receiver or trustee, under the court.

See also Rules 86 and 87 as regards the duties of liquidators authorizing the disposal of trading stock.

110. Returns. **110.** The Commissioners of Inland Revenue may require returns to be furnished within two months, also such other particulars as they may require.

The Commissioners of Inland Revenue may, for the purposes of this part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require. (*Finance* (*No.* 2) *Act*, 1915, *s.* 44 (1).)

Smeeton v. Attorney General (1919). An engineer who had been required to make a return of profits for Excess Profits Duty purposes, brought an action against the Attorney-General for a declaration that he was not liable to Excess Profits Duty and was under no obligation to make the return. The Court held that such a declaration could not be given as it would be usurping the function of the Court appointed to deal with Revenue cases.

111. In the case of a liable company being wound up the liquidator must give notice and set aside a sufficient sum to meet the duty.

111. Liquidators.

Where a company is wound up after the commencement of this Act, and before the first day of July, nineteen hundred and sixteen, and the company would be chargeable with Excess Profits Duty if the provisions of this Act were continued and extended to accounting periods ending before the first day of July, nineteen hundred and sixteen, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of the company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such Excess Profits Duty as may become chargeable. (*Finance* (*No.* 2) *Act*, 1915, *s.* 45 (4).)

But see Rule 15 as regards certain concerns carried on by liquidators.

See also Rules 86 and 87 as regards the duties of liquidators who dispose of trading stock.

112. The duty shall be—

112. Assessment, collection and recovery.

(*a*) Assessed by the Commissioners of Inland Revenue;

(*b*) Payable at any time after two months from the date of assessment; the Commissioners may permit payment by instalments;

(*c*) Paid in advance (or a sum on account thereof) where the taxpayer desires; the Treasury shall fix the rate of interest to be allowed at the time;

(*d*) Recoverable as a debt to the Crown, also (if less than £50) summarily as a civil debt.

The Excess Profits Duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

112. Assessment, collection and recovery.—(*contd.*)

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct. (*Finance* (*No.* 2) *Act*, 1915, *s.* 45 (1).)

The amount of duty payable shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

Any such amount shall if it is less than fifty pounds be recoverable also summarily as a civil debt. (*s.* 45 (3).)

Any person may deposit with the Commissioners of Inland Revenue any sums for the purpose of satisfying any Excess Profits Duty which may thereafter become payable by him; and sums so deposited shall be applied in payment of any such duty as and when it becomes payable.

In calculating the amount to be so applied in payment of duty interest shall be allowed at such rate as may for the time being be determined by the Treasury. (*Finance Act,* 1916, *s.* 54.)

Rule (*a*) is amplified by regulation as follows—

If in any case any person required by law to make a return fails to do so, or if the return made by him appears to the Commissioners of Inland Revenue to be incorrect or insufficient, the Commissioners may, without prejudice to the enforcement of any penalty which may have been incurred, make an assessment of Excess Profits Duty according to the best of their judgment. (*Regulation No.* 2 *under Finance* (*No.* 2) *Act*, 1915, *s.* 45 (7).)

Notice of an assessment shall be served on the person charged or on the person in whose name he is charged. (*Regulation No.* 3 *under Finance* (*No.* 2) *Act*, 1915, *s.* 45 (7).)

A notice of assessment under the Act may be delivered to the person on whom it is intended to be served, or served

112. Assessment, collection and recovery.—(*contd.*)

upon him by post. Service by post in this regulation shall have the same meaning as in the Interpretation Act, 1889. (*Regulation No.* 4 *under Finance* (*No.* 2) *Act,* 1915, *s.* 45 (7).)

The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment. Provided that no such additional assessment shall be made in any case where an assessment has been reduced by the General or Special Commissioners upon an appeal, or by any Court by which an appeal has been re-heard. (*Regulation No.* 11 *under Finance* (*No.* 2) *Act,* 1915, *s.* 45 (7).)

(*c*) The rate has been 5½ per cent. on all sums deposited up to 3rd March, 1917, then 5 per cent. on later deposits.

The official announcement is as follows—

"ALLOWANCE OF INTEREST.—If the net duty demanded in this Notice is paid more than a week before the last day allowed for payment, a repayment will at once be made to the taxpayer in respect of interest for the period between the date of receipt of the remittance and the date (two months after the service of the Notice) when the duty falls due. Interest, which will be calculated on the net sum required to satisfy the duty, will at present be allowed at the rate of 5 per cent. per annum, but this rate will be subject to alteration from time to time as the Treasury may prescribe. Any alteration of the rate of interest will be publicly notified by the Treasury, but will apply only to deposits made after the date of such alteration."

113. Payment by War stock.

113. The Treasury may make regulations for the acceptance of war stock and bonds in satisfaction of Excess Profits Duties and Munitions Levies.

The Treasury may by regulations prescribe as securities to be accepted in payment of any Death Duty or Excess Profits Duty or munitions Exchequer payments any stock or bonds forming part of any issue made for raising money in connection with the present war, and any such regulations may specify different securities in respect of different duties and payments, and may prescribe the limitations and conditions subject to which any securities will be accepted, and any person from whom any sum is due on account of any Death Duty or Excess Profits Duty or munitions Exchequer payments may pay that sum or any part thereof by means of the transfer, in accordance with and subject to the provisions of such regulations as aforesaid, to the Commissioners of Inland Revenue of an appropriate amount (ascertained as hereinafter mentioned) of any stock or bonds authorized by the regulations. (*Finance Act*, 1917, s. 34 (1).)

Any stock or bonds so transferred shall be accepted by the Commissioners of Inland Revenue in satisfaction of the amount. (*Finance Act*, 1917, s. 34 (2).)

Any stock or bonds so transferred shall be deemed to mature for payment on the date of the transfer, but the principal payable on maturity shall be deemed to be a sum equal to the price of issue, and the principal and interest of the stock or bonds when received by the Commissioners of Inland Revenue shall be brought to account as revenue in such manner as the Treasury may direct. (*Finance Act*, 1917, s. 34 (3).)

Stock or bonds so transferred shall for the purposes of this section be valued at the price of issue with the *addition of any interest accrued due at the date of transfer but then remaining unpaid, after deducting the amount of any interest which may be receivable by the transferor after that date:*

113. Payment by War stock.—(*contd.*)

Provided that in the case of Excess Profits Duty and munitions Exchequer payments—

(a) *if the transfer takes place after the date when the duty or payments become payable there shall be deducted from the value so attributed to the stock or bonds the amount of any interest which accrued due on the stock or bonds after that date; and*

(b) *if the transfer takes place before that date, a sum equal to the value thereof so ascertained as aforesaid shall be deemed to be money deposited under section fifty-four of the Finance Act,* 1916,[1] *and interest thereon shall be allowed in accordance with that section.* (*Finance Act,* 1917, s. 34 (4).)

For the purposes of this section interest shall be deemed to accrue from day to day. (*Finance Act,* 1917, s. 34 (5).)

114. Duty may be assessed—

114. Persons assessable.

(*a*) Where there has been no change of ownership since the commencement of the accounting period concerned—on the person owning or carrying on the business;

(*b*) where the ownership has changed since the commencement of the accounting period concerned and where an account was drawn up at the date of change—on the person who owned or carried on the business or his agent (for the period prior to the change) and on the person now owning or carrying on the trade or business (for the period since the change);

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[1] Page 316.

114. Persons assessable.—(*contd.*)

(*c*) where the ownership has changed since the commencement of the accounting period concerned and where no account was drawn up to the date of change—EITHER as in (*b*), OR on the person now owning or carrying on the business (for the accounting period including the date of change).

The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased. (*Finance* (*No.* 2) *Act,* 1915, s. 45 (2).)

See Rule 38.

Wankie Colliery Co., Ltd., v. Commissioners of Inland Revenue (*King's Bench Division,* 1920). A company carried on business until 31st December, 1914, when the business was sold to another company. Accounts were made up to 31st December, 1914. The Commissioner of Inland Revenue assessed the purchasing company in respect of excesses to 31st December, 1914. The Commissioners relied on the *Finance* (*No.* 2) *Act,* 1915, *Section* 45 (2), but it was held that the assessment was illegal. The *Finance* (*No.* 2) *Act,* 1915, received the Royal Assent on 23rd December, 1915.

Rowlatt, J.: "The Excess Profits Duty is imposed by Section 38 of the *Finance* (*No.* 2) *Act,* 1915. That is the charging section, and *prima facie,* as it is a retrospective tax, the import of that is that the taxpayer in respect of the tax so charged is the person who owns or owned the thing charged. There can be no doubt, in my judgment, about that being the *prima facie* scope of the tax. But the question arises under Section 45, which is a machinery section, and it arises because there are four little words in that section, 'for the time being.'"

114. Persons assessable.—(*contd.*)

The Judge proceeded to analyze Section 45 (2)—

"'*The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person.*' That, I think, deals with the general position where no difficulty arises, and it says that the duty may be assessed on the person who is owning or carrying on a trade, or his agent. Where there is a business being carried on it simply says that the person who is owning or carrying it on, or his agent, may be taxed.

"Now the *next limb* is where a business has ceased. In that case the person to be taxed is the person who owned the business, or the agent of the owner when it was being carried on.

"*Thirdly*, there is the case of a business changing hands, and there, what the section seems to me to do is this: It seems to me to recognize perfectly well that where the business has changed hands the person to pay is the owner before it changes hands in respect of the time before it did change hands, and the option that is given is an option which is necessary where there has been a change of ownership without the accounts being made up,

114. Persons assessable.—(*contd.*) so that there is no accounting period, and there has to be an artificial accounting period made by the Commissioners of Inland Revenue. So that it says, where there has been a change in the business, the Commissioners may take the date of the change as the end of an accounting period if they like, and assess the person who did own the trade or business as from that period. But where there is no necessity for doing that, where there is no necessity for their stepping in to make an artificial end of an accounting period, it seems to me that they must assess the person who owned it upon the period when he did own it.

"I think I ought to add this. It seems to me that it is within the scheme of Section 45 that if there is a change of ownership that does break the accounting period, they need not introduce a new accounting period at the date of the change, but can assess it for the one period, leaving it to be adjusted between the parties, as in the common case of Schedule A, or rates or charges for water, or anything else."

115. Firms, companies, infants, etc.

115. In cases other than those of individuals charged in their own names—

(*a*) Firms are to be charged in one sum; returns are to be made by the precedent acting partner (or by the agent, etc., where no partner resides in the United Kingdom); returns may be required from all partners:

(*b*) Companies and other bodies are chargeable in the names of their secretaries or other officers;

115. Firms, companies, infants, etc. —(*contd.*)

(*c*) Infants and lunatics are chargeable in the names of their trustees, guardians, committees, etc.

(*d*) Persons resident abroad are chargeable in the names of their agents resident in this country.

Married women are omitted from the above, being chargeable in their own names.

In amplification of the above rules, the following notes are necessary—

(*a*) This is in pursuance of that portion of the Income Tax Act, 1842 (Sec. 100), Schedule D, Cases I and II, Rule 3, which is made applicable by regulation. (See Appendix, page 470.)

(*b*) This is in pursuance of the Income Tax Act, 1842 (Sec. 40), and the Finance Act, 1907 (Sec. 22 (2)), made applicable by regulation. (See Appendix, pages 466 and 473.)

(*c*) and (*d*). These rules set out the main purport of the Income Tax Act, 1842 (Secs. 41, 44, and 51), also made applicable by regulation. (See Appendix, pages 467 to 473.) The sections in question also contain the following provisions—

> The trustees, guardians, tutors, committees, agents or receivers are answerable for doing all necessary acts in order that the duty may be assessed and paid. They may retain such trust moneys as shall recoup them for duties paid.
>
> All persons in receipt of profits for other persons must make returns thereof.

(*d*) The Finance (No. 2) Act, 1915, Sec. 31 (1) and (2), is also in point here. (See Appendix, page 474.) It prescribes that a non-resident may be charged in the name of any branch, factor, agent, receiver, or manager whether such branch has the receipt of the profits of the non-resident or not.

116. Appeals 116. Appeal may be made to the General or Special Commissioners of Income Tax, and may, on a point of law, be carried to the High Court. Duty may be required to be paid notwithstanding any appeal; immediate repayment is to be made where necessary.

Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this part of this Act) appeal to the General Commissioners for the division in which he is assessed, or to the Special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under sections twenty-one and twenty-two of the Income Tax Act, 1853, *to require an appeal in Ireland to the Special Commissioners to be reheard by the county court judge, or chairman of quarter sessions, or recorder, shall apply to an appeal in Ireland under this provision.*

Section fifty-nine of the Taxes Management Act, 1880[1] *(which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the General or Special Commissioners under this section or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the General or Special Commissioners under the Income Tax Acts.* (*Finance* (*No.* 2) *Act*, 1915, s. 45 (5).)

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[1] Set out on page 472.

116. Appeals —(contd.)

The duty assessed by the Commissioners of Inland Revenue shall be payable notwithstanding any appeal under this section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given. (*Finance* (*No.* 2) *Act,* 1915, s. 45 (6).)

The following Regulations also bear on these matters—

Any person dissatisfied with the amount of any assessment made upon him may at any time within thirty days from the date of the service of notice of assessment, or within such further time as the Commissioners of Inland Revenue may allow, give notice to the Surveyor of Taxes named in the notice of assessment of his intention to appeal against the amount of the assessment, and every such notice shall specify the grounds of appeal, and, in England, Scotland, and Wales, whether the appellant desires that the appeal shall be heard by the General Commissioners or the Special Commissioners. (*Regulation No.* 5 *under Finance* (*No.* 2) *Act,* 1915, s. 45 (7).)

With reference to any notice of appeal and to the hearing of an appeal, the General or Special Commissioners as the case may be shall, subject to the provisions of the Act, and to any Regulations made thereunder, have all such power in relation to any matter of appeal as is possessed by them in relation to notices of appeal and the hearing of appeals under any Act for the time being in force relating to Income Tax. The General or Special Commissioners shall certify in writing to the appellant and to the Commissioners of Inland Revenue, after determining any appeal, their decision and the amount, if any, by which

116. Appeals —(*contd.*)

any assessment has been thereby altered. (*Regulation No.* 6 *under Finance* (*No.* 2) *Act,* 1915, *s.* 45 (7).)

The Commissioners of Inland Revenue may be represented on the hearing of an appeal by any person nominated in that behalf by them, and any person so nominated shall have the same powers with reference to appeals as may for the time being be exercised by a Surveyor of Taxes with reference to appeals relating to Income Tax. (*Regulation No.* 7 *under Finance* (*No.* 2) *Act,* 1915, *s.* 45 (7).)

Any barrister or solicitor or member of an incorporated society of accountants may be heard by the General or Special Commissioners on an appeal. (*Regulation No.* 9.)

No Commissioner interested in his own right, or in the right of any other person, in any matter under appeal shall take part in or be present at the hearing or determination thereof. (*Regulation No.* 10 *under Finance* (*No.* 2) *Act,* 1915, *s.* 45 (7).)

Where no appeal lies—see *Williamson Film Printing Co., Ltd.,* v. *Inland Revenue* (page 172).

117. Penalties.

117. The penalty for failure to give notice of liability or to furnish a proper return or other particulars required, is a fine not exceeding £100 and £10 for every day during which the default continues after conviction. A fine not exceeding £100 may be imposed in respect of attempted evasion of liability by means of a fictitious or artificial transaction, or for failure to reveal any such transaction entered into before the passage of the Act.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary *conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.* (*Finance* (*No.* 2) *Act,* 1915, s. 44 (2).) **117. Penalties.—(contd.)**

A person shall not, for the purpose of avoiding the payment of Excess Profits Duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds. (*Finance* (*No.* 2) *Act,* 1915, s. 44 (3).)

If any person fails to give the notice required by this provision[1] *he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.* (*Finance Act,* 1916, s. 45 (3).)

118. Secrecy is imposed on all officials dealing with the assessments and collection of Excess Profits Duty. **118. Secrecy.**

All Commissioners and other persons employed for any purpose in connection with the assessment or collection of Excess Profits Duty shall be subject to the same obligations as to secrecy as with respect to Income Tax, and any oath taken by such person as to secrecy with respect to Income Tax shall be deemed to extend also to secrecy with respect to Excess Profits Duty. (*Finance* (*No.* 2) *Act,* 1915, s. 45 (8).)

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[1] See page 313.

119. Use of documents.

119. The Surveyor of Taxes may make use of information and documents relating to the Income Tax assessments on persons, etc., concerned. He may have access to all papers furnished to the Commissioners to whom appeal is made against an Excess Profits Duty assessment. Notices to the Board may be sent to him.

A Surveyor of Taxes may for any purpose in connection with the assessment and collection of the duty and the hearing of appeals make use of or produce in evidence any returns, correspondence, schedules, accounts, statements or other documents to which he has had or may have lawful access for the purposes of Income Tax, and shall have the same right to examine all accounts, schedules and statements furnished to the General or Special Commissioners as he has in the case of appeals relating to Income Tax. (*Regulation No.* 8 *under Finance* (*No.* 2) *Act,* 1915, s. 45 (7).)

Any notices required to be given to the Commissioners of Inland Revenue may be given either to the Commissioners at their principal office in London, or to the Surveyor of Taxes acting for the district in which the person giving such notice resides or carries on business. (*Regulation No.* 12 *under Finance* (*No.* 2) *Act,* 1915, s. 45 (7).)

In these Regulations, unless the context otherwise requires, the expression " Surveyor of Taxes " means a Surveyor as defined by the Taxes Management Act, 1880, *and " the Act " means the Finance* (*No.* 2) *Act,* 1915. (*Regulation No.* 13 *under Finance* (*No.* 2) *Act,* 1915, s. 45 (7).)

Destruction or Loss of Documents.—See the special provisions in *Finance Act,* 1920, s. 61.

120. Forms, assessments, etc., shall be as required by the Commissioners of Inland Revenue. Proceedings are not void for want of form.

120. Forms.—(*contd.*)

This rule is in pursuance of the Taxes Management Act, 1880, Sec. 15 (2) and (5), made applicable by Regulation and printed in the Appendix (p. 471).

121. The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the duty and the hearing of appeals.

121. Regulations.

The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the Excess Profits Duty and the hearing of appeals under this section, and may by those regulations apply and adapt any enactments relating to the assessment and collection of Income Tax, or the hearing of appeals as to Income Tax by the General or Special Commissioners, which do not otherwise apply. (*Finance* (*No.* 2) *Act*, 1915, s. 45 (7).)

The Regulations were made on 6th January, 1916. They are headed—

> "REGULATIONS PRESCRIBED BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 45, SUBSECTION (7), OF THE FINANCE (NO. 2) ACT, 1915."

Any regulation may be found by reference to the *Table of Regulations* in the front of this book.

CHAPTER XVII

SPECIMEN ACCOUNTS, RETURN, AND COMPUTATIONS

Example I. BY way of drawing together the rules previously set forth, two examples are given, and the necessary computations and returns are explained. In Example I the main course and incidents of business are included and notes made as to possible variations which may affect the matter. Example II (page 345) covers incidental difficulties, particularly those arising out of book-keeping adjustments.

EXAMPLE I

Fixing the Accounting Period.

The first step will be to fix the accounting period according to Rule 16. In this case this period is the year ended 31st December, 1914. Had the accounts been made up half-yearly, the period would be a half-yearly one ended on 31st December, 1914. Had the accounts been made up quarterly, the first accounting period would have ended on 30th September, 1914, and the second on 31st December, 1914.

The last three pre-war trade years (Rule 18) immediately precede the accounting period. In the example given they are represented by the calendar years 1911, 1912, and 1913.

It is next necessary for the accounts to be "adjusted" so that it may be clear what profits have been made for purposes of Excess Profits Duty. This is the subject of Chapters VI to XIII.

Example I.—(contd.)

Computing the Profits.

Considerable care must be observed in this connection. It will often be advisable for the accounts of all four years to be so dealt with, as it is not always advantageous to select, for the standard of profit, the results of the two years which at first sight appear the best. Although in the above case it is obvious that 1911 and 1912 will be selected for this purpose, the 1913 accounts will also be adjusted.

We begin with the profits shown in the Profit and Loss Accounts, and then run through the items of the various accounts as follows—

TRADING ACCOUNT

Sales.—Are these the full sales, or is there a hidden reserve for possible returns of goods or for bad debts? No allowance can be made for either of these matters except so far as specific cases of returns or bad or doubtful debts are concerned. It is assumed that there is no such reserve in this item.

Stock.—For Income Tax purposes it is necessary that the valuations of 1911, 1912, 1913, and 1914 should be on an identical basis.[1] For purposes of Excess Profits Duty this is doubly necessary, in view of the comparison which is the essential feature of the tax. Here, again, there should be no hidden reserve or writing down or up. A certificate is usually required.

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[1] See Chapter XI, however, *re* Valuation of Stocks.

A. & F. BROWN

TRADING ACCOUNTS

For the Years ended 31st December, 1911, 1912, 1913, and 1914

	1911.	1912.	1913.	1914.		1911.	1912.	1913.	1914.
	£	£	£	£		£	£	£	£
To Stock of Raw Material	4,500	5,200	5,000	4,000	By Sales	75,000	82,000	65,000	105,000
,, Stock of Finished Material	9,000	8,000	10,000	9,000	,, Stock of Raw Material	5,200	5,000	4,000	5,000
,, Purchases	32,000	35,000	27,000	43,000					
,, Wages	11,000	11,500	9,000	14,000	,, Stock of Finished Product	8,000	10,000	9,000	7,000
,, Fuel, Lighting, and Water	1,000	800	700	1,200					
,, Rent and Rates	800	800	800	800					
,, Carriage	600	700	550	800					
,, Repairs	190	400	120	130					
,, Balance to Profit and Loss A/c	29,110	34,600	24,830	44,070					
	88,200	97,000	78,000	117,000		88,200	97,000	78,000	117,000

PROFIT AND LOSS ACCOUNTS

FOR THE YEARS ENDED 31ST DECEMBER, 1911, 1912, 1913, AND 1914

	1911.	1912.	1913.	1914.		1911.	1912.	1913.	1914.
	£	£	£	£		£	£	£	£
To Salaries	2,400	2,500	2,500	3,200	By Trading Account .	29,110	34,600	24,830	44,070
,, Income Tax . .	1,200	1,400	1,600	1,800	,, Dividends on Invested Reserve .	500	510	520	520
,, Office Rates, Lighting, and Coal .	280	300	300	320					
,, Ground Rent on Office Premises .	50	50	50	50					
,, Repairs to Office	30	40	40	30					
,, Depreciation of Lease of Premises	220	220	220	220					
,, Depreciation of Fixtures . . .	10	10	10	10					
,, Depreciation of Machinery . .	250	260	260	250					
,, Interest on Partners' Capital .	5,000	5,200	5,100	5,300					
,, Interest on Loan .	200	200	200	200					
,, Annuity to deceased Partner's Widow . . .	300	300	140	—					
,, Written off Goodwill Account. .	500	500	—	1,000					
,, Reserve . . .	—	—	—	2,000					
,, Balance being profit	19,170	24,130	14,930	30,210					
	29,610	35,110	25,350	44,590		29,610	35,110	25,350	44,590

BALANCE SHEETS

As at 31st December, 1911, 1912, 1913, and 1914

Liabilities.	1911.	1912.	1913.	1914.	Assets.	1911.	1912.	1913.	1914.
	£	£	£	£		£	£	£	£
To Reserve . . .	10,000	10,000	10,000	12,000	By Lease of Premises	1,680	1,460	1,240	1,020
,, Sundry Creditors .	1,200	800	900	1,300	,, Stock-in-Trade .	13,200	15,000	13,000	12,200
,, Loan Account . .	1,000	1,000	1,000	1,000	,, Office Fixtures . .	210	200	300	290
,, Capital	54,510	52,250	52,420	56,470	,, Machinery . . .	4,300	4,040	3,780	3,530
					,, Sundry Debtors .	23,000	20,000	21,000	29,000
					,, Investment of Reserve Fund . .	9,800	9,800	10,000	12,000
					,, Cash at Bank . .	4,280	3,740	5,230	4,110
					,, Cash at Office . .	240	310	270	320
					,, Goodwill . . .	10,000	9,500	9,500	8,500
	66,710	64,050	64,320	70,770		66,710	64,050	64,320	70,770

Example I.—(contd.)

Purchases.—No special point arises here, as the item will have been taken from a carefully kept subsidiary account.

Wages.—Payments to partners may not be charged for the present purpose. It will be assumed that each partner draws £500 for the supervision of the manufacture, and that the £1,000 is included in this item.

Fuel, etc.—Rent and Rates—Carriage.—No point arises.

Repairs.—The expenses of repairs are chargeable as and when incurred, but the variation of the charge for this item in the Trading Account calls for inquiry. 1912 was an exceptional year, and of the £400, £200 may be assumed to refer to renewals. Under Rules 45, or 60, and 21 this charge may be apportioned over the appropriate period if it is thought worth while. In illustration of the theory it will be assumed that the £200 would have to be incurred every 5 years, the average annual charge being £40. An adjustment might be made as shown below.

PROFIT AND LOSS ACCOUNT

Dividends on Invested Reserve.—Rule 44 prohibits the inclusion of this sum in the profits.

Salaries.—The same remark applies as to *Wages* above. It may be taken that £500 has been paid to the partners (£250 each).

Income Tax.—This is not an allowable deduction.

Example I.—(contd.)

Office Rates, Lighting, and Coal.—No comment is needed.

Ground Rent on Office Premises.—For Income Tax purposes this charge would be disallowed, and the net Schedule A assessment would be deducted. For purposes of Excess Profits Duty, however, the charge for Ground Rent is admitted (Rule 42), and no deduction is made in respect of the business premises (Rule 43).

Repairs to Office.—This item may be passed.

Depreciation of Lease.—This charge is not admissible. No direct reference thereto is made in the Act, but Rule 39 serves to prohibit the charge.[1]

Depreciation of Fixtures.—Rule 39 applies here also, but for Income Tax purposes the deduction is permitted, under a recent concession. If £10 is a fair annual charge and reasonably meets the average cost of renewals (which must be capitalized, when incurred) no objection is likely to be made. As, however, the sole purpose of an Excess Profits Duty computation is to secure a fair comparison between one period and another, it is immaterial whether the charge is admitted or not unless the Percentage Standard has been adopted. This observation would apply equally to a number of other items which appear in accounts at a fairly constant figure.

Depreciation of Machinery.—This charge must be disallowed, in accordance with the Income Tax Acts (Rule 39, also Rule 60). An allowance will be made from the adjusted profit.

Interest on Partners' Capital.—This charge is disallowed (Rule 39). The sums in question form part of the profits.

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[1] See Rule 62.

Example I.—(contd.)

Interest on Loan.—This deduction is admitted (Rule 42).

Annuity to Deceased Partner's Widow.—If this is a voluntary payment the charge will be disallowed. It would in that case be an apportionment of profit. If the widow were legally entitled to the annuity, and were not a sleeping partner, the charge would be admitted. The annuity is assumed to have ceased in 1913, and its effect, therefore, has been to diminish the profits standard, as against the profits of the accounting period. It would appear that the capital value of the annuity might be ascertained by actuarial calculation, and might then appear among the firm's liabilities until the date of death. If this were done, the capital would increase at the date of death, and Rule 98 would operate. This matter is certainly problematical, however, and one would wish to know how the annuity arose. It might well be that the payment should be regarded as an apportionment of profit, in which case the sum would be taken out of the account for Excess Profits Duty. This course will be followed in the present instance.

Written off Goodwill Account.—This charge cannot be allowed (Rule 39).

Reserve.—The addition of £2,000 must not be charged against profits (Rule 39).

It is now possible to present a statement of adjusted profits as follows—

Example I. *(contd.)*

	1911.	1912.	1913.	1914.
Balance of Account . .	£19,170	£24,130	£14,930	£30,210
Wages to Partners . .	1,000	1,000	1,000	1,000
Apportionment of Renewals	160	– 40	– 40	– 40
Salaries to Partners . .	500	500	500	500
Income Tax	1,200	1,400	1,600	1,800
Depreciation of Lease .	220	220	220	220
,, of Machinery	250	260	260	250
Interest on Capital . .	5,000	5,200	5,100	5,300
Annuity (voluntary or proprietary) . . .	300	300	140	—
Written off Goodwill . .	500	500	—	1,000
Added to Reserve . .	—	—	—	2,000
Adjusted profit . . .	28,300	33,470	23,710	42,240
Less Depreciation as below	225	214	203	193
,, Dividends (Rule 42).	500	510	520	520
Profit for Excess Profits Duty purposes	£27,575	£ 2,746	£22,987	£41,527

Depreciation Allowance.—As a general rule this is not the same amount as that charged in the accounts. The following figures will be assumed to have resulted from previous Income Tax allowances.

		£
1st January, 1911 :	Written-down Value	4,500
	Allowance at 5 % .	225
1st January, 1912 :	Written-down Value	4,275
	Allowance at 5 % .	214
1st January, 1913 :	Written-down Value	4,061
	Allowance at 5 % .	203
1st January, 1914 :	Written-down Value	3,858
	Allowance at 5 % .	193

Ascertaining the Capital.

Example I.—(*contd.*)

The third operation is the computation of the capital. This is done by examining the assets and liabilities as revealed in the Balance Sheets. It is necessary to remark, in this connection, that the capital should be computed in accordance with the general rules detailed in Chapter XIV and further explained below, but that the exact operation of those rules cannot be gauged in the absence of the accounts and history of the business concerned. There are so many unexpected and peculiar incidents in particular cases that a stereotyped formula is impossible. With this warning our example may be proceeded with.

Lease of Premises.—The earning power of the premises is as large in 1914 as in the year in which the lease was obtained. The value of the lease should, therefore, appear at the amount which it cost the present proprietors—say £2,200.

Stock-in-Trade.—The valuation [1] is assumed to be on the same basis throughout the years concerned. The figures appearing in the Balance Sheet will, therefore, be taken.

Office Fixtures.—These require renewal in order that their "earning power" may be sustained. There have been certain renewals in 1913 (£110). These have been capitalized, and the depreciation written off has been allowed for Income Tax and Excess Profits Duty purposes. The Balance Sheet values may, therefore, be taken.

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[1] See Chapter XI.

SPECIMEN

RETURN OF PROFITS OF THE TRADE OR BUSINESS and

(*a*) Full Style or Designation of the trade or business . . . . .

(*b*) Names and Addresses of the Partners, in the case of a Firm . . . .

(*c*) Nature of the trade or business . . . .

(*d*) Where carried on . . . .

(*e*) The commencing and ending date of the Accounting Period or Periods *which ended after* 4th *August*, 1914, *and before* 1st *July*, 1915	**See Notes 1 & 2** on sheet enclosed.
(*f*) **Amount of Profits** arising from the trade or business in each of the above **Accounting Periods,** *computed as the Act directs*	**See Note 4** on sheet enclosed.
(*g*) **Amount of Profits** arising from the trade or business in each of the three last **Pre-War Trade Years** (*i.e.*, the three last Trade Years which ended before 5th August, 1914) *computed as the Act directs*	**See Notes 4, 5 & 6** on sheet enclosed.

PARTICULARS REQUIRED TO BE

(1) Copies of any original Trading Accounts and Profit and Loss Accounts for each Years, and of any original Balance Sheets as at the end of each of the said Trade Years.

[*Note.*—In so far as copies *complying with this requirement* have already been need not be transmitted. Moreover, if the profits of each to duty, copies of the accounts need not in the first instance particulars required beyond those declared on the form ; while exceeds the Profits Standard a further communication will be Standard, and no copies of accounts need be furnished with this

(2) Full particulars, if not already notified, as to the nature of any fictitious or ment of the Act relating to the Excess Profits Duty, during any of the above

[* It will greatly facilitate agreement as to the amount of your liability if you will attach—

(i.) Detailed statements showing how the amounts returned by you in spaces (*f*) and (*g*) above are arrived at from the Accounts ;

(ii.) Detailed statements showing your computation of the amount of Excess Profits Duty payable by you in respect of the above Accounting Period or Periods.]

RETURN (Example I)

OTHER PARTICULARS IN CONNECTION THEREWITH

(*a*) *A. and F. Brown*

	Names.	Addresses.
(*b*)	*Arthur Brown* *Francis Brown*	*7 The Highway, N.W.* *The Gables, Chadhurst, Surrey*

(*c*) *Ironworks*

(*d*) *Chadhurst, Surrey, and* 79 *Eastern Street, E.C.*

(*e*)	Accounting Period commencing on 1*st January*, 1914, and ending on 31*st December*, 191 4 .	Accounting Period commencing on 191 , and ending on 191 .	[*Note.—Where there are more than two Accounting Periods, further forms will be supplied on application to the before-mentioned Surveyor of Taxes.*]
(*f*)	* £ 41,527	* £	

(*g*)	Year ended 31*st December*, 191 1. * £ 27,575	Year ended 31*st December*, 191 2. * £ 32,746	Year ended 31*st December*, 191 3. * £ 22,987

TRANSMITTED WITH THIS RETURN—

of the above Accounting Periods and for each of the three last Pre-War Trade Periods and Years and as at the commencement of the first of the said Pre-War

furnished for the purpose of Income Tax it should be so stated, and duplicate copies Accounting Period, as computed by you, fall below the point involving liability be supplied, and in that event a subsequent intimation will be made as to any if you wish to show that in the case of your trade or business the Percentage Standard addressed to you specifying the particulars required in relation to the Pre-War Return other than those relating to the Accounting Periods.]

artificial transaction or operation entered into or carried out, before the commence-Accounting Periods or Pre-War Trade Years. [*See Section* 44 (3) *of the Act.*]

DECLARATION.

I hereby declare that the foregoing particulars, and the particulars transmitted herewith, are in every respect truly and correctly stated, to the best of my judgment and belief.

Signature...... *A. Brown*..........................

STATE WHETHER THE RETURN IS MADE—
On your Own behalf;
or, As Partner of a Firm;
or, As Trustee, Agent, Receiver, or Factor, etc., and for whom;
or, As the Officer of any Corporation or Company;

..... *As Partner of a Firm*.................

....

Example I. —(*contd.*)

Machinery.—The circumstances are probably such that the Income Tax figures will be taken (Rule 93).

Sundry Debtors.—These figures may be accepted (See Rule 95).

Investment of Reserve Fund.—This will be ignored (Rules 91 and 44).

Cash at Bank and Office.—These items must be dealt with as shown in Rule 92. The treatment depends altogether on the facts. The figures given in the example suggest that the partners withdraw any cash not needed in the business. The Balance Sheet figures will, therefore, be accepted.

Goodwill.—The history of this item must be ascertained. If it was actually purchased by the present proprietors, the consideration given therefor will be included in the capital computation. If it was built up by the present proprietors by means of advertisement whose cost was capitalized in the accounts, or the purchase of the goodwill of a second business absorbed, etc., a similar valuation should be made. But in the absence of any such action within the years 1911, 1912, 1913, and 1914, the valuation will be constant within those years. It will be assumed that £12,000 was paid for the goodwill in 1907.

Reserve.—This will be ignored.

Sundry Creditors.—These items will be deducted from the total of the assets.

Loan Account.—The same remark applies.

NOTE.—In the ordinary course the 1911 Capital will be the amount as at 31st December, 1910. It is unnecessary to set forth a fifth Balance Sheet here. The 1911 figures are, therefore, postulated as below.

Example I.—(contd.)

	1911.	1912.	1913.	1914.
	£	£	£	£
Lease of Premises	2,200	2,200	2,200	2,200
Stock	13,500	13,200	15,000	13,000
Office Fixtures	220	210	200	300
Machinery	4,500	4,275	4,061	3,858
Sundry Debtors	18,050	23,000	20,000	21.000
Cash at Bank	3,420	4,280	3,740	5,230
,, Office	300	240	310	270
Goodwill	12,000	12,000	12,000	12,000
Total	54,190	59,405	57,511	57,858
Sundry Creditors	1,700	1,200	800	900
Loan Account	1,000	1,000	1,000	1,000
Total	2,700	2,200	1,800	1,900
Capital	51,490	57,205	55,711	55,958

The Standard of Profits.

The percentage standard will evidently be 7 per cent. (for 1914) on something less than £60,000 (about £4,200 therefore). The profits standard is much higher and will be selected. (Chapter IV.) The highest pre-war years are 1911 and 1912, the profits of which were £27,575 and £32,746 respectively. The standard =

$$\frac{£27{,}575 + 32{,}746}{2} = £30{,}160$$

Example I.—(*contd.*)

Computation.

		£
Profits of Accounting Period		41,527
Adjustment under Rule 96—		
Capital of Accounting Period	£55,958	
Average Capitals for 1911 & 1912 $\frac{(\pounds 51{,}490 + 57{,}205)}{2}$	54,347	
Increase	1,611	
7 % on Increase		113
		41,414
Standard of Profits		30,160
Excess		11,254
Allowance		200
		2)11,054
Duty (at 50%)		£5,527

Return Form.

See specimen form.

Example II

On the following pages are set out the accounts necessary to the example. All those whose lot it has been to deal with any number of Excess Profits Duty computations will have realized how sharp the eye must be to detect those casual accidents and incidents of account keeping, which might so easily conceal the necessity for adjustment. The reader will not have the difficulty, experienced in practice, of turning from sheet to sheet on a desk littered with the accounts of three or four years. In other ways, also, the present intention is to indicate the points on which inadvertence is easy, but to illustrate each difficulty in as obvious a manner as possible. Many readers will have seen cases on each of which might be written a book as long as that in which this example appears. **Example II.**

BALANCE SHEETS

Item No.		1911.	1912.	1913.	1914.
		£	£	£	£
1.	Issued Capital .	500,000	500,000	500,000	600,000
2.	„ Debentures	200,000	200,000	200,000	100,000
3.	Sundry Creditors	6,000	8,000	7,000	10,000
4.	Bills Payable .	14,000	21,000	18,000	26,000
5.	Contingency A/c .	600	—	400	500
6.	Bad Debts Reserve . .	4,000	3,000	5,000	8,000
7.	Pension Fund .	4,200	4,900	5,300	6,000
8.	Reserve . .	150,000	175,000	175,000	175,000
9.	Profit car. forw'rd	25,000	30,000	20,000	30,000
10.	„ per Profit & Loss A/c .	44,000	48,000	54,000	120,000
11.	Total .	947,800	989,900	984,700	1,075,500

PROFIT AND LOSS ACCOUNTS

Item No.		1912.	1913.	1914.	1915.
		£	£	£	£
23.	Directors' Fees .	2,000	2,000	2,000	2,000
24.	Salaries & Office Expenses, etc. .	7,400	8,000	9,000	11,500
25.	Staff Bonuses .	2,000	2,000	2,800	3,500
26.	Rent, Rates, Taxes, Lighting, etc. .	9,000	10,000	11,000	11,000
27.	Depreciation .	30,000	30,000	30,000	30,000
28.	Debenture Interest . .	10,000	10,000	7,500	5,000
29.	Balance Profit .	48,000	54,000	120,000	200,000
30.	Total .	108,400	116,000	182,300	263,000

AT 31st DECEMBER

Item No.		1911.	1912.	1913.	1914.
		£	£	£	£
12.	Goodwill . .	200,000	200,000	200,000	200,000
13.	Leasehold property . .	150,000	140,000	130,000	160,000
14.	Plant and Machinery .	200,000	180,000	160,000	140,000
15.	Sundry Debtors .	43,000	41,000	47,000	63,000
16.	Bills Receivable .	18,000	24,000	26,000	38,000
17.	Stock-in-Trade .	114,000	110,000	116,000	104,000
18.	Bonus on Redemption of Debentures .	—	—	—	7,000
19.	Investments .	200,000	260,000	280,000	220,000
20.	Treasury Bills .	—	—	—	80,000
21.	Cash in hand and at bank . .	22,800	34,900	25,700	63,500
22.	Total .	947,800	989,900	984,700	1,075,500

FOR YEARS ENDED 31st DECEMBER

Item No.		1912.	1913.	1914.	1915.
		£	£	£	£
31.	Gross Trading Profit . .	95,500	102,300	167,700	247,000
32.	Transfer Fees and Sundry Receipts	500	500	600	700
33.	Interest and Dividends . .	12,400	13,200	14,000	15,300
34.	Total . .	108,400	116,000	182,300	263,000

Example II.—(*contd.*)

Item No.	APPROPRIATION OF PROFITS.		£
35.	Carried forward to 31st Dec., 1911		25,000
36.	Profit, 1911		44,000
37.			69,000
	Appropriated:	£	
38.	Dividend paid 1st April, 1912	10,000	
39.	Grant to Pension Fund, 1st April, 1912	1,000	
40.	Written off Investments	1,000	
41.	Added to Reserve	25,000	
42.	Directors' Commission	2,000	
43.			39,000
44.	Carried forward to 31st Dec., 1912		30,000
45.	Profit 1912		48,000
46.			78,000
	Appropriated:	£	
47.	Dividend paid, 1st April, 1913	43,000	
48.	Grant to Pension Fund, 1st April, 1913	1,000	
49.	Written off Investments	10,000	
50.	Directors' Commission	4,000	
51.			58,000
52.	Carried forward to 31st Dec., 1913		20,000
53.	Profit, 1913		54,000
54.			74,000

Example II.—(*contd.*)

Item No.			
	Appropriated :		
55.	Dividend paid 1st April, 1914	£ 31,000	£
56.	Grant to Pension Fund	1,000	
57.	Written off Investments	7,000	
58.	Directors' Commission	5,000	
59.			44,000
60.	Carried forward to 31st Dec., 1914		30,000
61.	Profit, 1914		120,000
62.			150,000
	Appropriated :		
63.	Dividend paid 1st April, 1915	£ 48,000	
64.	Grant to Pension Fund	2,000	
65.	Written off Investments	10,000	
66.	Directors' Commission	10,000	
			70,000
67.	Carried forward to 31st Dec., 1915		80,000
68.	Profit, 1915		200,000
69.			280,000
70.	Dividend paid 1st April, 1915	£ 82,000	
71.	Written off expense of redeeming Debentures	7,000	
72.	Grant to Pension Fund	2,000	
73.	Written off Investments	10,000	
74.	Directors' Commission	16,000	
75.	Added to Reserve	20,000	
76.			137,000
77.	Carried forward to 31st Dec., 1916		143,000

Example II.
—(*contd.*)

INCOME TAX

1912.

Item No.		£	£
78.	Balance, Profit and Loss A/c .		48,000
	Add :		
79.	Income Tax	3,000	
80.	Ground Rent	100	
81.	Depreciation	30,000	
82.	Debenture Interest . .	10,000	
83.	Expense of obtaining new capital	—	
84.	Contingency A/c (increases)	—	
85.	Bad Debts Reserve (increases)	—	
			43,100
			91,100
	Deduct :		
86.	Taxed Fees in Item 32 . .	300	
87.	„ Interest & Dividends	12,000	
88.	Net Annual Value of Business Premises owned .	15,000	
89.	Bad Debts Reserve (decreases)	1,000	
90.	Contingency A/c (decreases)	600	
91.	Appropriations: Directors' commission. . .	4,000	
92.	Pension Fund . . .	1,000	
			33,900
93.			£57,200

94. As regards 1914 and 1915, further deductions will be due in respect of Excess Profits Duty payable.

95. The Depreciation allowances are assumed to

ADJUSTMENT

	1913.		1914.		1915.	
Item No.	£	£	£	£	£	£
78		54,000		120,000		200,000
79	4,200		3,800		5,000	
80	100		100		100	
81	30,000		30,000		30,000	
82	10,000		7,500		5,000	
83	—		200		—	
84	400		100		—	
85	2,000		3,000		1,000	
		46,700		44,700		41,100
		100,700		164,700		241,100
86	300		400		500	
87	13,000		14,000		15,000	
88	15,000		17,000		18,000	
89	—		—		—	
90	—		—		100	
91	5,000		10,000		16,000	
92	1,000		2,000		2,000	
		34,300		43,400		51,600
93		£66,400		£121,300		£189,500

have been separately computed as follows—

Year of assessment :

1912–13 . .	£9,000	1914–15 . .	£8 000
1913–14 . .	£8,500	1915–16 . .	£10,000

Example II.—(*contd.*)

EXCESS PROFITS DUTY—

Item No.		31st Dec., 1911. £	£
96.	Goodwill	200,000	
97.	Leasehold property . .	190,000	
98.	Plant and Machinery (depreciation deducted below) .	240,000	
99.	Sundry Debtors . . .	43,000	
100.	Bills Receivable . . .	18,000	
101.	Stock-in-Trade . . .	114,000	
102.	Investments	—	
103.	Cash in hand and at bank .	22,800	
			827,800
	Deduct :		
104.	Debentures (reduced in 1914 out of proceeds of new issue of Capital) .	200,000	
105.	Sundry Creditors . .	6,000	
106.	Bills Payable . . .	14,000	
107.	Contingency A/c . . .	600	
108.	Pension Fund . . .	—	
	Appropriations :		
109.	Dividend . . .	7,500	
110.	Pension Fund . .	750	
111.	Directors' Commission	2,000	
112.	Depreciation (Income Tax) Plant & Machinery	34,000	
113.	New Capital issued during year	—	
			264,850
	Net Capital . .		£562,950

CAPITAL STATEMENT

	31st Dec., 1912.		31st Dec., 1913.		31st Dec., 1914.	
Item No.	£	£	£	£	£	£
96	200,000		200,000		200,000	
97	190,000		190,000		230,000	
98	240,000		240,000		240,000	
99	41,000		47,000		63,000	
100	24,000		26,000		18,000	
101	110,000		116,000		94,000	
102	—		—		—	
103	34,900		25,700		63,500	
		839,900		844,700		908,500
104	200,000		150,000		100,000	
105	8,000		7,000		10,000	
106	21,000		18,000		26,000	
107	—		400		500	
108	—		—		—	
109	32,250		23,250		36,000	
110	750		750		1,500	
111	4,000		5,000		10,000	
112	43,000		51,500		59,500	
113	—		—		—	
		309,000		255,900		243,500
	£	530,900		£588,800	£	665,000

Example II.—(*contd.*)

EXCESS PROFITS DUTY—
1912.

Item No.		£	£
114.	Balance, Profit and Loss A/c		48,000
	Add :		
115.	Income Tax . . .	3,000	
116.	Depreciation . . .	30,000	
117.	Expense of obtaining new capital	—	
118.	Contingency A/c. . .	—	
119.	Bad Debts Reserve (increases)	—	
120.	Ground Rent . . .	—	
121.	Debenture Interest . .	—	
			33,000
			81,000
	Deduct :		
122.	Interest and Dividends .	12,400	
123.	Bad Debts Reserve (decreases)	1,000	
	Appropriations :		
124.	Directors' Commission .	4,000	
125.	Pension Fund . .	1,000	
126.	Depreciation (Income Tax Allowance) . . .	9,000	
127.	Taxed Fees in Item 32 .	—	
128.	Annual Value of Premises owned	—	
			27,400
	Net Profits . .		£53,600

PROFITS STATEMENT

Item No.	1913.		1914.		1915.	
	£	£	£	£	£	£
114		54,000		120,000		200,000
115	4,200		3,800		5,000	
116	30,000		30,000		30,000	
117	—		200		—	
118	—		—		—	
119	2,000		3,000		1,000	
120	—		—		—	
121	—		—		—	
		36,200		37,000		36,000
		90,200		157,000		236,000
122	13,200		14,000		15,300	
123	—		—		—	
124	5,000		5,000		5,000	
125	1,000		2,000		2,000	
126	8,500		8,000		10,000	
127	—		—		—	
128	—		—		—	
		27,700		29,000		32,300
		£62,500		£128,000		£203,700

Example II.—(*contd.*)

Item No.

NOTES.

1. This item does not necessarily (or usually) bear any relation to the capital of the company as computed for Excess Profits Duty purposes. The Reserve, for instance, must equally be regarded as capital.

2. See Item 104.

5. See Item 107.

7. It is assumed that this fund is out of the Company's control, *i.e.*, that contracts or agreements with the beneficiaries and prospective beneficiaries prevent the resumption by the Company of grants made to the fund.

8. It will be observed that the Reserve has been increased by an appropriation of the 1911 profits. (Item 41.)

9. These entries are explained on the statement headed "Appropriation of Profits."

12. See Item 96.

13. The property is depreciated £10,000 per annum. During 1914 there was new capital expenditure of £40,000.

14. The plant and machinery is depreciated £20,000 per annum. See Items 95 and 112.

15. There is no hidden reserve.

17. Do. do.

18. This was written off by way of appropriation of 1913 profits.

19. At cost less proceeds of sales and less depreciation by way of appropriation of profits.

24. It is assumed that no "management" remuneration is included here, nor increases calling for action under Rule 48.

26. Includes Ground Rent (Item 80); Income Tax (Item 79).

27. See Items 95 and 112.

28. See Item 104.

31. It is assumed that the Trading Account has been scrutinized and passed for Income Tax and Excess Profits Duty purposes.

32. Includes Item 86

39. See note on Item 7.

81. See Item 95.

83. Disallowed as a capital expense. It is not included as capital for Excess Profits Duty purposes as it is not an asset in the hands of the company.

Example II.—(*contd.*)

Item No.

84. See Item 107.

88. Taxed under Schedule A. But see Item 128.

90. See Item 107.

91. See Items 42, 50, etc.

92. See note on Item 7.

95. See example under Rule 60.

96. See Rule 97 as regards the Goodwill of a " private " company. In the present case it is assumed that that Rule does not apply and that the actual cost to the Company in respect of the Goodwill was £200,000. Had that amount been written down before 1911, or between 1911 and 1915, the computation under consideration would nevertheless show the Goodwill at £200,000.

97. Leasehold property. In practice this is not regarded as being subject to depreciation[1] and the total capital cost will appear in the capital computation. The amounts shown do not agree with the Balance Sheet, Item 13. The property is assumed to have cost £190,000 and to have been the subject of further capital expenditure of £40,000 in 1914.

98. Plant and Machinery should appear in the capital computation at its total capitalized cost to date, less the aggregate of the Income Tax allowances to date.

99, 100, and 101. No hidden reserve should be passed unnoticed. For the present purpose such a reserve would decrease the capital—to the detriment of the trader.

102. Investments are excluded, under Rule 44. See note under Item 108. (If it is material, the *average* investments should be excluded from the amount.)

103. These balances no doubt include sums to be paid away as dividend. An adjustment is made —Item 109.

104. The Debentures stand at £200,000 at 31st December, 1913. This was reduced to £100,000 half-way through 1914. As the computation at 31st December, 1913, is really for the purpose of ascertaining the average capital during 1914 (Rule 98), the amount inserted as at 31st December, 1913, is £150,000, the average amount of Debenture during 1914. But this has only been done because

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[1] Rule 62 deals with recent Income Tax legislation.

Example II.—(*contd.*)

the redemption of the £100,000 was out of new capital introduced from outside. The only other methods of repaying debt are (1) by a corresponding reduction of the assets as at 31st December, 1913, or (2) by appropriation of current (1914) profits. Method (1) does not affect the balance of capital, and method (2) is prohibited from being considered under Rule 90. The objection to method (1) may be shown as follows—

POSITION 1—

Debentures .	£100,000	Fixed Assets .	£150,000
		Cash . . .	25,000

The capital is £75,000.

POSITION 2—

Since the time of Position 1, the Company has made a profit of £10,000. If the books were closed the position would be as follows. (The books are *not* closed, so the accounting period is not yet ended.)

Debentures .	£100,000	Fixed Assets .	£150,000
		Cash . . .	25,000
Profit . .	10,000	Cash (or other Assets) . .	10,000

As we are still in the middle of an accounting period, the profit of £10,000 may not serve to increase the capital to £85,000. It is still £75,000.

POSITION 3—

The Company repays £20,000 of the Debentures.

Debentures .	£100,000	Fixed assets .	£150,000
		Cash . . .	25,000
Profit . . .	10,000	Cash (or other Assets) . .	10,000
Less Debentures	20,000	*Less* Cash . .	20,000

The capital remains (for Excess Profits Duty purposes) at £75,000.

Item
No.

Example II.—(*contd.*)

Were the company to raise £20,000 new capital, the capital would become £95,000 at once, whether the £20,000 were applied to the redemption of debentures or to any other purpose.

107. This item corresponds with Item 5 in the Balance Sheets. The meaning is taken to be that, at 31st December, 1911, for instance, the Company possibly owed £600 on particular accounts, but was not certain. Instead of placing the amount among the avowed Sundry Creditors, it reduced the profits and the capital by creating a Contingency Account. For Income Tax purposes this was regarded as a Reserve, and the charge against profits was disallowed. In 1912 it was discovered that the £600 was actually owing. No charge was made against the 1912 profits, the charge against the 1911 profits being sufficient. As, however, the charge last referred to was not passed for Income Tax purposes, a deduction of £600 was made in the computation for 1912. Such a method would and does pass for Income Tax purposes. For Excess Profits Duty purposes, however, it is necessary for items to be exactly apportioned. As the £600 proved to be a current charge for 1911 it is regarded as such. At 31st December, 1911, the Company actually owed £600, hence the entry against Item 107.

108. The Company is assumed to " owe " the amount standing to the credit of the Pension Fund, and in the ordinary case this debt would form a deduction in ascertaining capital. In the present case, however, the Fund is obviously with the Company for investment purposes, and has probably served to increase the amount of the Investments (Item 19). As Item 19 is omitted from the capital computation, Item 7 should be omitted similarly. This principle might be carried further and it is difficult to draw the line. Could a company claim that its *Debentures* also served to increase the amount of the Investments ? If the moneys concerned were lent to the company with the intention (on the part of the lenders) that they should be invested, and if the company issued debentures for that purpose, such debentures

Example II.—(*contd.*)

Item No.

being secured on the investments, the claim could hardly be resisted. But the debenture interest could not be deducted from profits. In any case such circumstances must rarely, if ever, exist. The principle is an interesting one.

109. The payment of a dividend is a clear withdrawal of capital if it is executed out of the previous year's profits already included in the capital statement for the current year. As the withdrawals took place one-quarter of the way through the year, the average withdrawal for the year is one quarter less than the dividend.

110. In the circumstances stated under Item 7, these grants constitute withdrawals from the previous year's profits already included in the capital computation.

111. These sums proved to have been owing to the directors at the end of the preceding year.

112. These represent the aggregate income tax allowances (allowances due, whether actually made or carried forward) to date. The allowance for the fiscal year ended 5th April, 1913, for example, is taken to be the allowance for the company's year ended 31st December, 1912, because such allowance was based on the value of the machinery at 31st December, 1911. See Item 95.

113. See Item 104. The difference of £50,000 might have appeared against Item 113 (31st December, 1913), except that it was desired to deal with the matter in the earlier note.

115. See Rule 51.

116. The restricted allowances (Rule 60) are made under Item 126.

117. This adjustment is made under Rule 39.

118. See note under Item 107.

119. See Rule 95 as regards Bad Debts.

120 and 121. See Items 80 and 81. No allowance for these matters was made for Income Tax purposes, as the company was entitled to recoup itself at the expense of the payees. For Excess Profits Duty purposes it is desired to ascertain the *Company's* profit, and the charges for these matters appearing in the accounts are therefore passed.

122. See Rule 44.

Example II.—(*contd.*)

Item No.

124. The 1915 deduction is restricted under Rule 48. The directors' fees were increased from £5,000 (1913) to £10,000 (1914), and to £16,000 (1915). As regards 1915, the Company can recover 60% on £11,000 from the officials concerned. See Rule 60 as regards allowance of (say) £2,000.

126. See note under Item 112. (Rule 44.)

127. Compare Item 86, under which a deduction was made for Income Tax purposes on the ground that the fees were taxed by way of deduction. For Excess Profits Duty purposes the fees are included in the profits.

128. Compare Item 88. Rule 43 is seen to operate.

EXCESS PROFITS DUTY—COMPUTATION

Capital.

Capital at 1st Jan., 1912 .	£562,950
,, ,, 1913 .	530,900
,, ,, 1914 .	588,800
,, ,, 1915 .	665,000

Average Capital, 1912 & 1913 $\dfrac{562{,}950 + 530{,}900}{2}$ = £546,925

Profits.

Year ended 31st Dec., 1912 . . .	£53,600
,, ,, 1913 . . .	62,500
,, ,, 1914 . . .	128,000
,, ,, 1915 . . .	203,700

It has been assumed that the 1911 profits are smaller than those of 1912 or 1913—hence the omission of the 1911 account.

Standard of Profits.

Percentage Standard = 6% on (£588,800 – 50,000[1]) = £32,328 (*not adopted*).

Profits Standard = $\dfrac{£53{,}600 + 62{,}500}{2}$ = £58,050 (*adopted*).

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[1] See Item 104.

Example II. —(*contd.*)

1914.	£
Profits of Accounting Period	128,000
Increased Capital, £588,800 – £546,925 = £41,875. 6% on £41,875 (Rule 98) =	2,513
	125,487
Standard of Profits	58,050
Excess	67,437
Allowance	200
	67,237
Duty at 50%	£33,618

1915.	£
Profits of Accounting Period	203,700
Increased Capital, £665,000 – 546,925 = £118,075. 6% on £118,075 (Rule 98) =	7,085
	196,615
Standard of Profits.	58,050
Excess	138,565
Allowance	200
	138,365
Duty at 60%	£83,019

We leave this example as at the end of 1915. Of the five years concerned, two must fall before August, 1914, and it is necessary that the remaining three years should immediately follow them. To continue the example would merely be tedious to the reader.

PART II

ESTABLISHMENTS CONTROLLED UNDER THE MUNITIONS OF WAR ACTS

CHAPTER XVIII

Levies under the Munitions of War Acts in respect of Profits arising from the Date of Control to 31st December, 1916

CONTROLLED CONCERNS—LEVY THE EXCESS OVER 20% INCREASED PROFITS—STANDARD OF PROFITS—ADDITIONAL CAPITAL AND INCREASED OUTPUT—EXPENSES ALLOWED—SPECIAL ADJUSTMENTS—OTHER CONCERNS AND PART CONCERNS—ACCOUNTS AND PERIODS.

It is shown in Chapter XX that Munitions Levies cease as regards any profits arising after 31st December, 1916. When an account includes periods before and after this date the profits thereof are to be apportioned according to respective lengths of time.

Until 2nd August, 1917 (the date of the enactment of the Finance Act, 1917), the Levy was administered by the Minister of Munitions. From that date the management was vested in the Commissioners of Inland Revenue (Rule 140), who considerably altered the procedure. For convenience of reference, the old (Munitions) procedure and the new (Inland Revenue) procedure are shown in parallel columns throughout this part of this book. Matter printed right across the page refers to the procedure both before and after the change. In Aug., 1917, the greater part of the computation of Levies payable in respect of profits arising on or before 31st December, 1916, remained to be made.

122. Limitation of profits.

122. The Minister of Munitions had power to order that any establishment in which munitions work is carried on should be subject to special provisions as to the limitation of profits, as from a date specified by him when declaring the establishment "controlled," to 31st December, 1916.[1]

If the Minister of Munitions considers it expedient for the purpose of the successful prosecution of the war that any establishment in which munitions work is carried on should be subject to the special provisions as to limitation of employers' profits and control of persons employed and other matters contained in this section, he may make an order declaring that establishment to be a controlled establishment . . .

Where in any establishment munitions work is carried on in some part of the establishment but not in other parts, the Minister of Munitions may, if he considers that it is practicable to do so, treat any part of the establishment in which munitions work is not carried on as a separate establishment, and the provisions of this Act shall take effect accordingly. (*Munitions of War Act*, 1915, s. 4.)

The expression "munitions work" for the purposes of the principal Act[2] *and this Act means—*

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[1] See Rule 139.

[2] Munitions of War Act, 1915.

122. Limitation of profits. —(*contd.*)

(a) *the manufacture or repair of arms, ammunition, ships, vehicles, and aircraft, and any other articles or parts of articles (whether of a similar nature to the aforesaid or not) intended or adapted for use in war, and of any other ships or vessels, or classes of ships or vessels, or parts of ships or vessels, which may be certified by the Board of Trade to be necessary for the successful prosecution of the war, and of any metals, machines, or tools required for any such manufacture or repair, and of the materials, of any class specified in an order made for the purpose by the Minister of Munitions, required for, or for use in, any such manufacture or repair as aforesaid; and*

(b) *the construction, alteration or repair of works of construction and buildings for naval or military purposes, and of buildings in which munitions work is or is intended to be carried on, and the erection of machinery and plant therein, and the erection of houses for the accommodation of persons engaged or about to be engaged on munitions work; and*

(c) *the construction, alteration, repair, or maintenance of docks and harbours and work in estuaries in cases where such construction, alteration, repair, maintenance or work is certified by the Admiralty to be necessary for the successful prosecution of the war; and*

(d) *the supply of light, heat, water, or power or the supply of tramways facilities in cases where the Minister of Munitions certifies that such supply is of importance for the purpose of carrying on munitions work, and the erection of buildings, machinery, and plant required for such supply; and*

(e) *the repair of fire engines and any other fire brigade appliances in cases where the Minister of Munitions certifies that such repair is necessary in the national*

122. Limitation of profits.—(contd.)

interest. (*Munitions of War* (*Amendment*) *Act,* 1916, *s.* 9 (1).)

This part of the Act shall apply to any docks used by the Admiralty for any purposes connected with the war as it applies to establishments in which munitions work is carried on, with the substitution in relation to any such docks or persons employed in any such docks of the Admiralty for the Minister of Munitions. (*Munitions of War Act,* 1915, *s.* 9.)

This Act shall have effect only so long as the office of Minister of Munitions and the Ministry of Munitions exist. (*s.* 20 (2).)

"Period of Control" means the period commencing with the date specified by the Minister upon making an order under Section 4 *of the Act declaring an establishment to be a controlled establishment, and ending on the date when such establishment ceases to be controlled under the Act.* (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 2.)

123. Profits left to proprietor.

123. Of the profits of any period during which an establishment is under control ([1]but not as regards profits arising after 31st December, 1916)—

an amount exceeding the "standard" of profit by 20 per cent. is declared to be the amount of profits divisible (i.e., remaining at the disposal of the proprietors so far as the Munitions Acts are concerned); the balance is to be paid into the Exchequer.

. . . *and on such order being made the following provisions shall apply thereto—*

Any excess of the net profits of the controlled establishment over the amount divisible under this Act, as

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[1] See Rule 139.

123. Profits left to proprietor.—(*contd.*)

ascertained in accordance with the provisions of this Act, shall be paid into the Exchequer. (*Munitions of War Act,* 1915, s. 4 (1).)

The net profits of a controlled establishment shall be ascertained in accordance with the provisions of this section and rules made thereunder and the amount of profits divisible under this Act shall be taken to be an amount exceeding by one-fifth the standard amount of profits. (*s.* 5 (1).)

See Rule 125 as regards an allowance for increase of capital or increased output.

124. Pre-war Standard.

124. The standard is the average profit of the establishment's two financial years last completed before 4th August, 1914, or a special standard may be granted from 2nd Aug.

Procedure before 2nd Aug., 1917.	Procedure from 2nd Aug., 1917.
This standard may be varied by agreement with the Minister of Munitions or by the Referees.	If agreement cannot be reached with the Commissioners of Inland Revenue, the matter may be referred to the Minister of Munitions and then (if desired) to the Referees. (*See Rule* 132.)

The standard amount of profits for any period shall be taken to be the average of the amount of the net profits for the two financial years of the establishment completed next before the outbreak of the war or a proportionate part thereof. (*Munitions of War Act,* 1915, s. 5 (2).)

If in any case it appears or is represented to the Minister of Munitions that the average under this section affords or may afford an unfair standard of comparison or affords no standard of comparison, the Minister may, if he thinks just, allow those net profits or losses to be brought into account, or substitute for the average such an amount as the

124. Pre-war Standard.—(*contd.*)

standard amounts of profits as may be agreed upon with the owner of the establishment. (s. 5 (3).)

The Minister of Munitions may, if he thinks fit, and shall, if the owner of the establishment so requires, refer the matter to be determined by a Referee or Board of Referees appointed or designated by him for the purpose, and the decision of the Referee or Board shall be conclusive on the matter for all purposes. (s. 5 (3).)

In subsection (3) *of section five of the principal Act, after the words " affords no standard of comparison " there shall be inserted the words " or that no such average exists," and after the words " if he thinks just, allow," there shall be inserted the words " or require."* (*Munitions of War* (*Amendment*) *Act*, 1916, s. 19.)

125. Increased output or additional capital.

125. The standard may be increased by 8 per cent. interest on the amount of any additional capital used in the establishment, or (where the output has increased) by the amount considered by the Minister of Munitions (or the Commissioners of Inland Revenue[1]) to afford a reasonable return in respect of the additional output. The establishment may select the more favourable of these two allowances. The allowance may be in addition to or in lieu of the 20 per cent. referred to in Rule 123, according as the Minister may direct.

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
The powers of the Minister may be exercised by the Referees on appeal. (*See Rule* 132.)	If agreement cannot be reached with the Commissioners of Inland Revenue, the matter may be referred to the Minister of Munitions and then (if desired) to the Referees. (*See Rule* 132.)

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[1] See Rule 140.

125. Increased output or additional capital.—(contd.)

(i) *For the purpose of ascertaining the excess of the net profits of a controlled establishment for any period of assessment in any case where* (a) *the average amount of capital employed in a controlled establishment during the period of assessment is greater than the average during the standard period, or* (b) *the volume of output of a controlled establishment for the period of assessment is proportionately greater than the volume of output for the standard period, there shall, at the request of the controlled owner, be added to the standard amount of profits whichever of the following sums may be the greater, that is to say—*

(a) *Such sum* (*in lieu of, or, at the discretion of the Minister, in addition to the one-fifth referred to in Section* 5 (1) *of the Act*) *as shall be equivalent to interest at the rate of eight per centum per annum on such amount as the Minister shall decide is the amount of the additional average capital, or*

(b) *Such sum* (*in lieu of, or, at the discretion of the Minister, in addition to the said one-fifth*) *amounting to such fraction of the additional net profits which in the opinion of the Minister might fairly have been earned in the standard period by an equivalent additional volume of output as the Minister shall decide will, in the circumstances of the case, afford a reasonable return in respect of the additional volume of output.*

In determining what is additional average capital for the purposes of this Rule, capital provided by the Government shall be excluded, but temporary loans (*other than capital so provided*) *and undivided ascertained profits employed in the business may be treated as capital.*

For the purposes of this Rule the output of a controlled establishment for a period of assessment shall be deemed to be the same proportion of the output for the financial year or period which covers the period of assessment when the *period of assessment is of that financial year or period (Munitions (Limitation of Profits) Rules,* 1915, *No.* 10 (i).)

126. Deductions prohibited.

126. In computing profits deductions are allowed for "proper selling, office, or other expenses," but not for income tax, interest, or in respect of assets not employed in the establishment whose profits are being considered.

For the purposes of these Rules net profits of a controlled establishment shall be deemed to be profits which would have accrued to the controlled owner in respect of work done in such establishment if such profits had been arrived at before bringing into account any sums in respect of Income Tax or interest or (except so far as the Minister may otherwise allow, or as may be necessary in any case where net profits or losses of any other establishment belonging to the controlled owner are brought into account for the purpose of the Act or these Rules) in respect of assets not employed in the controlled establishment, and (subject as aforesaid) after allowing proper selling, office, or other expenses, or apportionments thereof. (Munitions (Limitation of Profits) Rules, 1915, *No.* 4.)

127. Deductions allowed.

127. In computing the profits for any period of assessment to the Munitions Levy, appropriate adjustments may be made for—

(i) exceptional wear and tear;

(ii) capital expenditure for munitions work purposes;

(iii) exceptional services rendered by the controlled owner;

(the above by addition to the standard or deduction from profits);

(iv) the probable value, when control ceases, of matters remaining from expenditure for munitions work purposes;

(v) increased remuneration to managers, etc., or other

127. Deductions allowed.—*(contd.)*

operations whereby profits are decreased (from 2nd Aug., 1917, Rule 49 applies to Munitions Levy computations, i.e., the power accorded to the owner of recouping himself for the disallowance of increased remuneration by recovery from the director or manager in question);

(the above by deduction from the standard or addition to profits);

(vi) special arrangements between the Government and the establishment;

(vii) any other matter appearing material to the Minister of Munitions (or the Commissioners of Inland Revenue[1]) or to the Referee;

(the above to increase or decrease the excess above the standard, according to the facts).

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
The adjustments referred to may be reviewed in computing the profits of the last period of control. (This provision cannot have effect.)	Any of the above adjustments which cannot be finally determined within the assessable period are required to be determined (and provisional allowances to be adjusted) at the same time as allowances under Rule 65.

In determining the net profits for any period of assessment, due consideration shall be given to, and any appropriate adjustments may be made in respect of all or any of the following matters, that is to say—

(a) *Exceptional wear and tear of plant, buildings and machinery;*

(b) *Capital expenditure specially incurred for the purpose of munitions work;*

(c) *The probable value to the controlled owner at the end of the period of control of any plant, buildings or*

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[1] See Rule 140.

127. Deductions allowed.—(*contd.*)

machinery erected or installed or other expenditure incurred for munitions work, since the 4th August, 1914 *;*

(d) *Special provisions or terms of any contracts entered into between the Government and the controlled owner ;*

(e) *Any exceptional services rendered by the controlled owner in connection with the controlled establishment ;*

(f) *Any increase in salaries or other emoluments of any persons engaged in the management or direction of the controlled establishment made since the end of the standard period, or any steps taken since the end of that period which might operate to decrease net profits ;*

(g) *Generally any other matter which may appear to the Minister, or to the Referee, as the case may be, material to be taken into account.*

Any such adjustments may be made either by additions to or deductions from the standard amount of profits or by way of charges or disallowance of charges against profits for the period of assessment. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 9.)

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
In ascertaining or determining net profits for the final period of assessment proper adjustments may be made in respect of the whole period of control in regard to any matters referred to in Rule 9, *so far as it may then be shown that sufficient adjustments have not been made in regard thereto in ascertaining or determining net profits for any previous period or periods of assessment.* (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 12.)	*Sections* (2) *and* (3) *of section forty-nine of the Finance Act,* 1916 (*which relate to the recovery of payments in respect of increased directors' fees*)*, shall apply for the purposes of Munitions Exchequer Payments as they apply for the purposes of Excess Profits Duty, with the necessary modifications.* (*Finance Act,* 1917, *s.* 24 (4).)

127. Deductions allowed.—(*contd.*)

Any allowances under Rule 9[1] *of the Rules of* 1915, *which fall to be determined in relation to a total period of time ending after the period in respect of which Munitions Exchequer Payments may be assessed and to be apportioned, shall be apportioned* pro rata *in the manner directed in Section* 27[2] *of the Act for the purpose of ascertaining the allowance to be taken into account in computing Munitions Exchequer Payments: and the reference to the end of the period of control in Rule* 9 (*c*)[1] *shall be construed as if it were a reference to the date at which allowance for exceptional depreciation and obsolescence under Section* 40 (3)[3] *of the Finance* (*No.* 2) *Act,* 1915 *falls, or may fall, to be finally determined.*

Provided that upon any such final determination, any allowance which may have been provisionally made under the said Rule 9 *and apportioned in respect of the period ending on the* 31*st December,* 1916, *shall be revised and the appropriate adjustment made by repayment to the Controlled Owner on further payment of Munitions Exchequer Payment as the case may require, and any appeal may be made as respects such adjustment as if it were an assessment of Munitions Exchequer Payments.* (*Munitions Exchequer Payment Rules,* 1917, *No.* 13.)

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[1] Page 372. [2] Page 407. [3] Page 227.

128. Other establishments.

128. The Minister of Munitions (or the Commissioners of Inland Revenue [1]) or the Referee may permit or require the profits or losses of any other establishments belonging to the same owner to be brought into account for Munitions Levy purposes. Conversely, a part only of an establishment may be brought into account.

PROCEDURE FROM 2ND AUG., 1917.

The Commissioners of Inland Revenue [1] may require any establishments in which the same person has a controlling or preponderating interest, to be treated as belonging to the same owner.

If in any case it appears or is represented to the Minister of Munitions that the net profits or losses of all or any other establishments belonging to the same owner should be brought into account, . . . the Minister may, if he thinks just, allow those net profits or losses to be brought into account.

The Minister of Munitions may, if he thinks fit, and shall, if the owner of the establishment so requires, refer the matter to be determined by a Referee or Board of Referees appointed or designated by him for the purpose, and the decision of the Referee or Board shall be conclusive on the matter for all purposes. (*Munitions of War Act,* 1915, *s.* 5 (3).)

PROCEDURE FROM 2ND AUG., 1917.

For the purposes of subsection (3) *of section five of the said Act,*[2] *any establishments in which the same*

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[1] The assessing authority from the passing of the Finance Act, 1917. (See Rule 140.)

[2] Munitions of War Act, 1915, above.

person has a controlling or preponderating interest may, if the Commissioners so determine, be treated as belonging to the same owner. (*Finance Act*, 1917, *s.* 24 (3).)

128. Other establishments.—(*contd.*)

129. Periods of assessment.

129. Unless it is directed otherwise by the Minister of Munitions (or the Commissioners of Inland Revenue),[1]

the accounts covering any period of assessment to the Munitions Levy are to be made up similarly (as regards dates and basis) to those for the standard period ;

where an account covers a controlled period and a non-controlled period, the profits are to be apportioned between them according to their respective lengths of time ;

no period of assessment may be longer than one year.

The Minister (or Commissioners)[1] may fix the opening and closing dates of a period whenever it is considered necessary to do so.

(i) *The accounts in respect of a controlled establishment for any financial year or period which includes a period of assessment shall, unless the Minister otherwise allows or requires, be made up to dates corresponding to those to which, and on the same basis as nearly as may be, as the accounts in respect of that establishment for the standard period were made up.*

(ii) *Where any such financial year or period is greater than the period of assessment, the net profits for the period of assessment shall, unless the Minister otherwise allows or requires, for the purposes of these Rules, be taken to be*

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[1] See Rule 140.

129. Periods of assessment.—(*contd.*)

the same proportion of the net profits for the financial year or period as the period of assessment is of the financial year or period.

(iii) *Except so far as the Minister shall otherwise expressly declare in any particular case, no period of assessment shall be of greater length than one year, and if and whenever the Minister shall consider it necessary so to do he shall fix the dates at which any period of assessment shall be deemed to commence and terminate.* (*Munitions* (*Limitation of Profits*) *Rules*, 1915, *No.* 7.)

CHAPTER XIX

Levies under the Munitions of War Acts in respect of Profits arising from the Date of Control to 31st December, 1916 (continued)

MATTERS REMITTED TO REFEREES—REFEREES' APPOINTMENT, REMUNERATION, ETC.—UNREASONABLE APPLICATIONS—INFORMATION REQUIRED BY MINISTER OF MUNITIONS OR COMMISSIONERS OF INLAND REVENUE—PROCEDURE—ASSESSMENTS—APPEALS—PAYMENT AND REPAYMENT—REGULATIONS—PENALTIES—ABROGATION OF CONFLICTING ACTS AND OBLIGATIONS.

Note as regards persons assessable, legal forms required, etc.

UNDER Regulation 3 of the Munitions Exchequer Payments Rules, 1917, certain provisions of the Income Tax Acts applicable to Excess Profits Duty are made applicable to Munition Levies also from July, 1917, viz.—

The assessment of firms, companies, infants, lunatics, residents abroad and (*by inference*) *married women.*	Rules 10 and 115, pages 49 and 322.
The provision of forms and validity of assessments with minor errors.	Rule 120, page 328.

130. Returns and Accounts.

130. The Minister of Munitions (or the Commissioners of Inland Revenue)[1] may call for any information he (or they) may desire for the purposes of his (or their) powers and duties. Such audited accounts and particulars as may be required with a view to determining the standard must be furnished within six weeks of the requirement. Similar particulars with regard to every period of assessment must be supplied within three months from the end of that period.

FURTHER RULES OF PROCEDURE FROM 2ND AUG., 1917.

The Commissioners of Inland Revenue may require returns and such other particulars as they desire to be furnished within two months.

Officers of the Commissioners may make use of documents, etc., furnished in connection with Income Tax, Excess Profits Duty or Munitions Levies.

All books and plant, etc., may be examined by an accountant nominated by the Minister (or Commissioners);[1] the Referee is required to determine any difference as to the necessity of any action proposed in this connection; any notice may be served by registered post.

The owner of any establishment in which persons are employed shall, if so required by the Minister of Munitions, give to the Minister such information, in such form and in such manner, as the Minister may require as to

(d) *any matters with respect to which the Minister*

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[1] Rule 140.

130. Returns and Accounts.—(*contd.*)

may desire information for the purpose of his powers and duties ;

and the Minister may arrange with any other Government department for the collection of any such information. (*Munitions of War Act,* 1915, *s.* 11 (1).)

Within six weeks of being requested by the Minister so to do the controlled owner shall deliver to the Minister such audited accounts and particulars in respect of the controlled establishment and of any other establishment belonging or partly belonging to the controlled owner as the Minister may require. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 5.)

Within three calendar months of the expiration of any financial year or period covering a period of assessment the controlled owner shall deliver to the Minister—

(a) *Audited accounts and particulars for that financial year or period similar to those relating to the standard year or period required under Rule* 5 *;*[1]

(b) *A statement setting out the adjustments* (*if any*) *which he claims should be made in the accounts so delivered in respect of any matter to which due consideration may be given under Rule* 9,[2] *and whether he requests any addition to the standard amount of profits under Rule* 10 *;*[3]

(c) *A declaration* (*which if so required by the Minister shall be a statutory declaration*) *made by the controlled owner and his auditor* (*or in the case of the controlled owner being an incorporated company, by the chairman or managing director or the responsible officer and the auditor of the company*), *declaring that the accounts are prepared strictly in accordance with Rule* 7,[4] *except so far as is otherwise expressly therein declared, and*

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[1] Above.

[2] Page 372.

[3] Page 370.

[4] Page 376.

130. Returns and Accounts. —(*contd.*)

that neither the controlled owner nor such officer has been party or privy to any transaction which might operate to prejudice the Exchequer in respect of excess profits under the Act. (*Munitions* (*Limitation of Profits*) *Rules*, 1915, *No.* 8.)

FURTHER PROCEDURE FROM 2ND AUG., 1917.

The provisions of Section 44 *subsection* (1) *of the Finance* (*No.* 2) *Act,* 1915,[1] *and of so much of Section* 44 *subsection* (2)[2] *thereof as relates to the penalty for failure to furnish a proper return or to furnish particulars in compliance with any requirement of the Commissioners, shall apply for the purposes of Munitions Exchequer Payments as they apply for the purposes of Excess Profits Duty subject to the necessary modifications and without derogation of the provisions of Rules* 5, 8, *and* 14, *of the Rules of* 1915.[3] *But no Controlled Owner shall be under any obligation to furnish to the Commissioners any return or other particulars if and so far as he satisfies the Commissioners that he has already furnished such return or particulars to the Minister in the form required for purposes of assessment of Munitions Exchequer Payments.*

Any requirement of the Minister made before the passing of the Act, and not

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[1] Page 381. [2] Page 326.
[3] Pages 379, 380 and 382.

130. Returns and Accounts. —(*contd.*)

met at the date may be deemed to be a requirement by the Commissioners. (*Munitions Exchequer Payments Rules,* 1917, *No.* 5.)

The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Part of this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require. (*Finance* (*No.* 2) *Act,* 1915, *s.* 44 (1).)

Any officer of the Commissioners may for any purpose in connection with the assessment and collection of Munitions Exchequer Payments and appeals and references thereon make use of any returns, correspondence, schedules, accounts, statements or other documents to which he has had or may have lawful access for the purposes of Income Tax or Excess Profits Duty or which may have been furnished to the Minister for the purposes of Munitions Exchequer Payments. (*Munitions Exchequer Payments Rules,* 1917, *No.* 14.)

130. Returns and Accounts.—(*contd.*)

(i) *All balance sheets, accounts and statements relating to any controlled establishment shall be subject to examination by an accountant nominated by the Minister, and the controlled owner shall at all reasonable times afford to such accountant proper facilities for inspecting all books, documents and records relating to the controlled establishment or any other establishment belonging or partly belonging to the controlled owner, which may be necessary to enable such accountant properly to examine and check any such balance sheets, accounts or statements and shall afford to any other person nominated by the Minister access to and proper facilities for inspecting any plant, stock and other assets of any such establishment and any documents and sources of information which may be necessary for the performance of his duties, and the controlled owner shall give to or procure for the said accountant all accounts and information and for any such other person all information which may be necessary for such purposes. The controlled owner shall at all times furnish to the Minister or to the Referee all such documents and information as they may respectively require with regard to the controlled establishment or any other establishment belonging to the controlled owner.*

(ii) *If any question shall arise as to whether any inspection, extract or information required by any such accountant or such other person under this Rule is necessary for any such purpose, the matter in difference shall on the application of either party thereto, or may at the instance of the Minister, be referred to and shall be determined by the Referee.* (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 14.)

131. Procedure for assessments.

131. Procedure is outlined as follows as regards assessments.

131. Procedure for assessments.—(*contd.*)

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
The Minister of Munitions is required to issue notices of proposals as regards the amounts to be taken as the standard and the profits of assessing periods. In the absence of objection within fourteen days the amounts are deemed to be agreed.	The Commissioners of Inland Revenue are required to assess the levy and to give notice personally or by post. They may make additional assessments within three years from the date of the first assessment. They may assess to the best of their judgment when no return is made or the return is considered incorrect. All amounts agreed between the controlled owner and the Minister of Munitions are to be adopted by the Commissioners, both as regards the standard and any allowance, etc. *The following Regulations prescribed by the Commissioners of Inland Revenue with regard to Excess Profits Duty are made applicable, viz., No.* 2 (*page* 316), *No.* 3 (*page* 316), *No.* 4 (*page* 317), *and the following part of No.* 11:— *The Commissioners of Inland Revenue may make additional assessments in any case where they deem it necessary at any time within three years from the date of the first assessment.* *Where any agreement exists between the Minister and the Controlled Owner as to the standard amount of profits or as to the amount of any allowance, adjustment or relief to be made in the assessment of*

131. Procedure for assessments.—(*contd.*)

Munitions Exchequer Payments, the amount of such standard, allowance, adjustment or relief shall be adopted by the Commissioners for the purpose of assessment. (*Munitions Exchequer Payment Rules,* 1917, *No.* 7.)

132. Procedure for appeals.

132. Procedure is outlined as follows as regards appeals.

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
Objection may be made within 14 days of the notice and in the event of continued disagreement the matter may be remitted to the Referee who may increase or decrease the amounts proposed.	Objection may be made within 30 days of the notice. In the event of continued disagreement the matter may be remitted for decision as follows: To the Minister of Munitions where the ground is (*a*) the non-allowance by the Commissioners of a standard other than that computed in the normal manner (*Rule* 124) or the inaccuracy of such standard; (*b*) the absence or insufficiency of allowance under Rule 127, iii, v, vi or vii, or Rule 125; (*c*) the departure by the Commissioners from any agreement made with the Minister: To the Referee: (*d*) in cases under (*a*), (*b*) or (*c*) where objection to the Minister's decision is expressed within 30 days; (*e*) in other cases of objection. A case may be taken to the High Court on a question of law.

As soon as may be after the receipt by the Minister of the accounts and particulars referred to in Rule 5,[1] *or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then as soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the standard amount of profits, and unless within fourteen days thereafter the controlled owner shall serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the standard amount of profits. If objection shall be so served and the Minister and the controlled owner are unable to settle the standard amount of profits by agreement, the matter shall be remitted by the Minister to the Referee for determination.*

The amount which the Referee shall thereupon determine shall be deemed to be the standard amount of profits whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 6.)

As soon as may be after the receipt by the Minister of the accounts and particulars referred to in Rule 8[2] *and*

132. Procedure for appeals.—(*contd.*)

Where the controlled owner is aggrieved by any assessment of Munitions Exchequer Payments made upon him by the Commissioners on the ground

(a) *that the standard amount of profits fixed by the Commissioners should have been fixed under*[3] *Section* 5 (3) *of the Munitions of War Act,* 1915, *as amended by any later enactment, and has not been so fixed, or if fixed under that subsection is erroneous,*

(b) *that no allowance or adjustment or no sufficient allowance or adjustment has been made under Rule* 9 (d) (e) (f) *or* (g)[4] *or Rule* 10[5] *of the Rules of* 1915, *as amended by the Munitions Rules,* 1917, *or*

(c) *that the Commissioners have not given due effect to any agreement which has been reached between the Minister and controlled owner as to the amount of any allowance, adjustment or relief to be made in the assessment of the Munitions Exchequer Payments,*

the controlled owner may within thirty days after service of the notice of assessment give notice of objection to the officer of the Commissioners named in that notice, stating the ground of his objection and the amendment required, and, unless the objection is

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[1] Page 379. [2] Page 380. [3] Page 368.
[4] Page 372. [5] Page 387.

132. Procedure for appeals.—(*contd.*)

such other accounts and particulars as the Minister may have required, or where any controlled owner has failed to supply the Minister with the same or any of them within the time appointed, then so soon as may be thereafter the Minister shall deliver to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits for the period of assessment, and unless within fourteen days thereafter the controlled owner shall serve upon the Minister notice of objection, the said amount shall be deemed to have been agreed and to be the net profits for such period of assessment. If objection shall be so served and the Minister and the controlled owner are unable to settle such net profits by agreement, the matter shall be remitted by the Minister to the Referee for determination.

The amount which the Referee shall thereupon determine shall be deemed to be the net profits for such period of assessment, whether the amount so determined be greater or less than the amount which the Minister was prepared to agree as aforesaid. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 11.)

(ii) *The Minister shall, when delivering to the controlled owner notice of the amount at which the Minister is prepared to agree the net disposed of by agreement, the matter shall be referred by the Commissioners for the opinion of the Minister to whose decision thereon the Commissioners shall give effect. If the controlled owner is dissatisfied with the decision of the Minister in any matter referred to in paragraphs* (a), (b), *or* (c) *of this Rule, in which an appeal to the Referee is allowed under Rule* 6 *of the Rules of* 1915, *or under paragraphs* (d), (e), (f) *or* (g) *of Rule* 9 *of the Rules of* 1915, *or under Rule* 10 *of those Rules as amended by the Munitions Rules,* 1917, *and within thirty days after notice from the Commissioners of such decision gives notice to the Commissioners that he requires the matter to be referred to the Referee, the Commissioners shall refer the matter to the Referee, whose decision shall be final and conclusive.* (*Munitions Exchequer Payments Rules,* 1917, *No.* 8.)

(i) *Where the controlled owner is aggrieved, on any ground on which an appeal to the Referee is allowed under the Rules of* 1915, *as amended by the Munitions Rules,* 1917, *other than those specified in Rule* 8, *by an assessment of Munitions Exchequer Payments made on him by the Commissioners, he may, within thirty days after service of the notice of assessment, give notice of objection*

132. Procedure for appeals.—(*contd.*)

profits for any period of assessment to which this Rule applies, state the sum which the Minister has decided shall be added under this Rule to the standard amount of profits.

If the controlled owner when serving on the Minister notice of objection to the amount at which the Minister is prepared to agree such net profits, shall also serve notice that he objects to the sum which the Minister has decided is to be added under this Rule to the standard amount of profits, the Referee, in determining the net profits for the said period of assessment, shall have the like power to that conferred upon the Minister by this Rule and the sum (*if any*) *added by the Referee to any standard amount of profits under this Rule may be greater or less than the sum which the Minister decided was to be added thereto.* (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 10 (ii).)

Rule 10 *of the principal Rules shall be read and have effect as if the following provisions had been contained therein in lieu of the provisions of paragraph* (ii) *thereof* (*that is to say*)—

"*The Minister shall, when delivering to the controlled owner notice of the amount at which the Minister is prepared to agree the net profits to the officer of the Commissioners named in the notice of assessment stating the ground of his objection and the amendment required, and unless the appeal is otherwise disposed of by agreement between the controlled owner and the Commissioners, the notice shall be referred by the Commissioners to the Referee, who shall thereupon determine the assessment at an amount which may be greater or less than the amount stated in the notice of assessment. Nothing herein shall entitle the controlled owner to appeal as respects the standard amount of profits if such standard has been agreed or is deemed to have been agreed with the Minister prior to the passing of the Act.*

(ii) *The provision contained in the third paragraph of subsection* (5)[1] *of Section* 45 *of the Finance* (*No.* 2) *Act,* 1915, *shall apply in the case of appeal under this rule as it applies in the case of an appeal under that Section.* (*Munitions Exchequer Payments Rules,* 1917, *No.* 9.)

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[1] Page 324.

132. Procedure for appeals.—(*contd.*)

for any period of assessment to which this Rule applies, state the sum which the Minister has decided shall be added under this Rule to the standard amount of profits, and in cases where such sum is in respect of any additional volume of output the measure of output in terms of which the Minister has computed such additional volume.

"*The controlled owner may within fourteen days after delivery to him of notice of the amount at which the Minister is prepared to agree such net profits serve notice on the Minister that he objects to the sum which the Minister has decided is to be added under this Rule to the standard amount of profits on the ground that the amount which the Minister has taken to be the amount of the additional average capital is less than the actual amount, or that some other measure of output should have been adopted for computing the volume of such additional output, and if the Minister and the controlled owner are unable to agree upon the amount of additional average capital or the measure of output in terms of which the additional volume of output should be computed, the matter in difference shall be remitted by the Minister to the Referee for determination. The amount of any additional average capital or the measure of output in terms of which* *any additional volume of output is to be computed as determined by the Referee may be such as to result in the addition to the standard amount of profits of a greater or less sum than the sum which the minister decided was to be added thereto."* (*Munitions* (*Limitation of Profits*) *Amendment Rules,* 1917, *No.* 4.)

132. Procedure for appeals.—(*contd.*)

Any notice or other document required by these Rules to be served or delivered may be sent through the post properly addressed in a prepaid registered letter, and unless the contrary is proved, shall be deemed to have been served or delivered in the ordinary course of post. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 18.)

133. Temporary rules.

133. Temporary rules of procedure were drawn up as regards assessments made by the Minister of Munitions but not collected at the time (2nd Aug., 1917) of the transfer of jurisdiction to the Commissioners of Inland Revenue :[1]

These rules were of temporary importance and are clearly set out in the following Regulations (Rules 6 and 10).

(i) *If at the time of the commencement of the Act any Munitions Exchequer Payments have been assessed by the Minister, but have not been collected, the Commissioners shall serve on the controlled owner a notice stating the amount of the Munitions Exchequer Payments so assessed, the amount of the Munitions Exchequer Payments remaining to be paid, and the manner in which such amount is to be paid; and such Munitions Exchequer Payments*

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[1] Rule 140.

133. Temporary rules.—(contd.)

remaining to be paid shall be payable by such owner on or before the date specified in the notice, provided that such date shall be at least twenty-eight days from the date when the payments were assessed by the Minister.

(ii) *Any such notice may be served on the controlled owner in like manner as a notice of assessment may be served.*

(iii) *For the purposes of these Rules Munitions Exchequer Payments shall be deemed to have been assessed by the Minister on the date of service of the notice by the Minister under Rule* 11[1] *of the Rules of* 1915, *of the amount at which the Minister is prepared to agree the net profits for the period of assessment and a certificate from the Minister that such notice has been given shall be sufficient proof of such assessment.*

Provided that any sum that has been required by the Minister to be paid provisionally for the credit of the Exchequer under Rule 13[2] *of the Rules of* 1915, *shall be deemed for the purposes of these Rules to be Munitions Exchequer Payments assessed by the Minister on the date on which the notice requiring such provisional payment was served.* (*Munitions Exchequer Payment Rules,* 1917, *No.* 6.)

Where the controlled owner is aggrieved at the amount of any Munitions Exchequer Payments assessed before the commencement of the Act but not then collected, on any ground on which an appeal to the Referee is allowed under the Rules of 1915, *as amended by the Munitions Rules,* 1917, *he may give notice of objection or appeal to the Commissioners as if, and within such time as if, the notice required by these Rules to be given as to the amount remaining to be paid were a notice of assessment, and the Commissioners shall deal with such notice of objection or appeal as if it were a notice under Rule* 8 *or* 9[3] *of these Rules as the case requires, but the Minister or the Referee*

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[1] Page 386. [2] Page 394. [3] Pages 386 and 387.

if such notice be referred to him may, if he sees fit, decline to consider the objection or appeal if he is of opinion that the controlled owner had full opportunity of giving notice of objection before the commencement of the Act and ought to have availed himself of that opportunity.

133. Temporary rules.—(contd.)

Provided that if at the time of the commencement of the Act such a notice of objection had been duly given but had not been determined (or if notice of objection is given within the time prescribed but between the time of the passing of the Act and the issue of the notice under Rule 6 *of these Rules) it shall be dealt with by the Commissioners as if it were a notice of objection or appeal under the Rules to an assessment made by them. (Munitions Exchequer Payment Rules,* 1917, *No.* 10.)

It should be noted that matters which have been agreed upon by the controlled owner and the Minister may not be reopened (Rule 131), also that notice of appeals on other matters must be given within the times prescribed.

134. Referees.

134. Two members of a Board of Referees (appointed by the Minister of Munitions) may constitute a quorum. Any decision given is conclusive (but see *Rule* 132). Provision is made for the remuneration of Referees, and for the controlled owner to bear the cost of an unreasonable application to the Referees as regards

(*a*) the inclusion of the profits or losses of other concerns in the same ownership (*Rule* 128);

(*b*) the substitution of a standard other than that computed in the normal manner (*Rule* 124).

In the event of a Board of Referees being appointed or designated by the Minister under the Act, two members of the Board shall constitute a quorum. (Munitions (Limitation of Profits) Rules, 1915, *No.* 16.)

134.
Referees.
—(*contd.*)

The decision of the Referee on any matter referred to him shall be conclusive on the matter for all purposes. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 17.)

There shall be paid out of moneys provided by Parliament to any person being a member of an arbitration tribunal, munitions tribunal, or board of referees under this Act, or being a referee under this Act, and to any other officers required in connection with any such tribunal or board, such remuneration and travelling or other expenses (*including compensation for loss of time*) *as the Minister of Munitions or Board of Trade, as the case may be, with the sanction of the Treasury may determine.* (*Munitions of War Act,* 1915, s. 13.)

Where a munitions tribunal dismisses any case under the principal Act or this Act, and it appears to the tribunal that the proceedings were vexatious or frivolous, the tribunal shall, unless it sees good cause to the contrary, award costs to the person against whom the complaint is made, and the costs so awarded shall, unless good cause to the contrary appears, include such sum as compensation for the expenses, trouble, and loss of time incurred in or incidental to the attendance of the person against whom the complaint is made before the tribunal as to the tribunal may seem just and reasonable. (*Munitions of War* (*Amendment*) *Act,* 1916, s. 22 (1).)

Where a Referee or Board of Referees to whom a matter has, under subsection (3) *of section five of the principal Act, been referred by the Minister of Munitions on the requirement of the owner of an establishment, considers that the requirement was unreasonable, the Referee or Board of Referees may order that any costs payable by the owner of the establishment shall be paid out of the amount of profits divisible under the principal Act.* (*s.* 22 (2).)

134. Referees.—(*contd.*)

Any matter which, under these Rules, is to be referred to the Minister or the Referee may be so referred by the transmission by the Commissioners to the Minister or the Referee, as the case may be, of the notice of objection or appeal or a copy thereof together with any particulars relating to the matter which may appear to the Commissioners necessary for the hearing of the objection or appeal. (*Munitions Exchequer Payments Rules,* 1917, *No.* 11.)

135. Procedure for payment.

135. Procedure as regards payment—

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
Payment must be made within 14 days of the determination of the amount payable, unless an extension of time is allowed by the Minister of Munitions. The Minister may require a provisional payment to be made before the liability is determined. Repayment is to be made if necessary to give effect to Rule 127 (*procedure before* 2nd *Aug.*). (i) *Any excess of the net profits of any controlled establishment for any period of assessment over the amount thereof divisible under the Act as ascertained or determined in accordance with the Act and these Rules shall be paid to the Minister for the credit of the Exchequer by the*	Payment must be made within 2 months of the date of assessment. The Levy is recoverable as a debt due to the Crown, and also, if less than £50, summarily as a civil debt. It is payable notwithstanding that any appeal or reference is being made, but repayment must be made subsequently to give effect to any decision. The Commissioners of Inland Revenue may permit payment by instalments. They may accept deposits to meet payments becoming due thereafter, and allow interest thereon. *The provisions of Section* 45 *subsection* (6)[1] *of the Finance* (*No.* 2) *Act,* 1915, *shall apply to Munitions*

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[1] Page 325.

185. Procedure for payment.—(contd.)

controlled owner within fourteen days after the amount of such excess has been ascertained or determined, or in any special circumstances within such extended time as the Minister may allow, and the Minister may make such allowance on such terms as he shall in each case think proper.

(ii) *If in the opinion of the Minister a substantial sum will be payable to the Minister for the credit of the Exchequer as the excess of the net profits of any controlled establishment for any period of assessment, then notwithstanding that the amount of such net profits has not been ascertained or determined the Minister may, after the expiration of the period fixed by Rule* 8[1] *for the delivery of accounts, require provisional payment to be made to him for the credit of the Exchequer on account of such excess in such manner as he shall direct and payment shall be made by the controlled owner accordingly.*

(iii) *If on making any such adjustments as are provided for by Rule* 12,[2] *it shall be shown that a controlled owner has paid to the Minister for the credit of the Exchequer more than having regard to such adjustments he should have paid, the Minister shall on the application of the controlled owner refund to him the amount so overpaid.* (*Munitions* (*Limitation of Profits*) *Rules*, 1915, *No.* 13.)

Exchequer Payments which are the subject of any objection, reference or appeal as they apply to Excess Profits Duty which is the subject of appeal under that Section. (*Munitions Exchequer Payments Rules*, 1917, *No.* 12.)

By the Schedule to the Munitions Exchequer Payment Rules, 1917, *the following enactments are made to apply—*

Finance No. (2) *Act*, 1915, *s.* 45 (1). *Page* 316.

Finance (*No.* 2) *Act*, 1915, *s.* 45 (3). *Page* 316.

Finance Act, 1916, *s.* 54. *Page* 316.

Any sum deposited for the purpose of satisfying Munitions Exchequer Payments or Excess Profits Duty may be applied in satisfaction of either or both charges. (*Munitions Exchequer Payment Rules*, 1917, *No.* 15.)

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[1] Page 380. [2] Page 372.

136. The Minister of Munitions has made regulations under date 15th September, 1914, and amended regulations under date 30th March, 1917, duly presented to Parliament. The Commissioners of Inland Revenue[1] have made regulations under date 3rd August, 1917. **136. Regulations.**

The Regulations in question appear in proper place in Chapters XVIII to XX. The following matter shows the form of the Regulations, the place in which each Regulation appears in this book, and the text of such Regulations as have no place elsewhere.

The Minister of Munitions may make rules for carrying the provisions of this section into effect, and these rules shall provide for due consideration being given in carrying out the provisions of this section as respects any establishment to any special circumstances such as increase of output, provision of new machinery or plant, alteration of capital or other matters which require special consideration in relation to the particular establishment. (*Munitions of War Act,* 1915, s. 5 (4).)

RULES MADE BY THE MINISTER OF MUNITIONS IN PURSUANCE OF SECTION 5 (4) OF THE MUNITIONS OF WAR ACT, 1915, WITH RESPECT TO THE LIMITATION OF PROFITS OF A CONTROLLED ESTABLISHMENT.

The Minister of Munitions in pursuance of Section 2 *of the Rules Publication Act,* 1893, *hereby certifies that on account of urgency it is desirable that the following Rules should come into immediate operation, and he therefore*

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[1] See Rule 140.

136. Regulations.—(contd.) *in pursuance of the above Section and Section* 5, *subsection* 4, *of the Munitions of War Act,* 1915, *hereby makes the following Rules, to come into operation forthwith as Provisional Rules—*

1. *These Rules may be cited as "The Munitions (Limitation of Profits) Rules,* 1915."

2. *In these Rules, unless the context otherwise requires—*

"The Act" means the Munitions of War Act, 1915.

"The Minister" means the Minister of Munitions for the time being.

"Controlled Establishment" means an establishment or part of an establishment in respect of which an order has been made by the Minister pursuant to Section 4 *of the Act.*

"Controlled Owner" means the company, firm, or person by whom a controlled establishment is for the time being owned or managed.

"Period of Assessment" means any period within the period of control for which profits are to be ascertained for the purposes of the Act.

"Period of Control"—see Rule 122, *page* 366.

"Standard Period" means the two financial years of a controlled establishment completed next before the 4th *August,* 1914.

"Standard[1] *Amount of Profits" means the average of the amount of the net profits of a controlled establishment for the standard period ascertained or determined in accordance with the Act and these Rules, or a proportionate part thereof.*

"The Referee" means the Referee or the Board of Referees referred to in Section 5 (3) *of the Act.*

"Audited" means audited by a chartered or incorporated

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[1] See Regulation 3 on page 398, however.

accountant or by an accountant approved in any particular case by the Board of Trade. 136. Regulations.—(contd.)

3. *The Interpretation Act,* 1889, *shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.*

Net Profits of a Controlled Establishment

4. *Definition of "net profits"* (*page* 367).

Standard Amount of Profits

5. *Accounts for the determination of a standard* (*page* 379).

6. *The determination of the standard* (*page* 385).

Net Profits for a Period of Assessment

7. *Periods of assessment* (*page* 376).

8. *Periods of assessment — information required* (*page* 380).

9. *Special adjustments* (*page* 372).

10. *Increased capital or output* (*pages* 368 *and* 387).

11. *The determination of net profits* (*page* 386).

12. *The determination of net profits—final period* (*page* 372).

13. *Payment to the Exchequer* (*page* 394).

General

14. *Examination of books, plant, etc.* (*page* 382).

15. *Any time limited by these Rules may be extended by the Minister from time to time and that notwithstanding that the time limited has expired.*

16. *Two Referees to constitute a quorum* (*page* 391).

17. *Referees' decisions final* (*page* 392).

136. Regulations. —(contd.)

18. *Service of notice by registered post (page* 389).

19. *Failure to comply with Rules an offence (page* 403).

20. *These Rules shall come into force on the fifteenth day of September,* 1915.

Signed by order of the Minister of Munitions this fifteenth day of September, 1915.

(*Signed*) H. LLEWELLYN SMITH,
General Secretary to the Ministry of Munitions.

Ministry of Munitions,
6, *Whitehall Gardens, S.W.*

RULES MADE BY THE MINISTER OF MUNITIONS IN PURSUANCE OF SECTION 5 (4) OF THE MUNITIONS OF WAR ACT, 1915.

The Minister of Munitions, in pursuance of Section 5, *subsection* (4), *of the Munitions of War Act,* 1915, *hereby makes the following Rules—*

1. *These Rules may be cited as "The Munitions (Limitation of Profits) Rules,* 1915 (*Amendment*) *Rules,* 1917," *and the Munitions (Limitation of Profits) Rules,* 1915 (*in these Rules referred to as "the principal Rules"*), *as amended by these Rules may be cited as "The Munitions (Limitation of Profits) Rules,* 1915 *and* 1917."

2. *Except as hereinafter provided, expressions to which meanings are assigned by the principal Rules have in these Rules the same respective meanings, and Rule* 3 *of the principal Rules shall apply with respect to these Rules.*

3. *In and for the purposes of the principal Rules as amended by these Rules, the expression "Standard Amount of Profits" shall, notwithstanding anything in the principal Rules, mean the average of the amount of*

186. Regulations.—(contd.)

the net profits of a controlled establishment for the standard period ascertained or determined in accordance with the Act and the principal Rules or any amount substituted for such average pursuant to Section 5 (3) *of the Act, as amended by Section* 19 *of the Munitions of War (Amendment) Act,* 1916, *or a proportionate part of such average or amount as the case may require.*

4. *Procedure as regards assessment.* (*Page* 389.)

5. *These Rules shall come into force on the* 30*th day of March,* 1917.

(*Signed*) EDMUND PHIPPS,
General Secretary.

RULES DATED 3RD AUGUST, 1917, MADE BY THE COMMISSIONERS OF INLAND REVENUE UNDER SECTION 24 OF THE FINANCE ACT, 1917.[1]

1. *These Rules may be cited as the Munitions Exchequer Payments Rules,* 1917.

2. *In these Rules " the Commissioners " means the Commissioners of Inland Revenue; " the Act " means the Finance Act,* 1917; *unless the context otherwise requires, " The Minister," " Controlled Owner," " Period of Assessment " and " The Referee," have the same respective meanings as in the Munitions (Limitation of Profits) Rules,* 1915 ; *and " Munitions Exchequer Payments " has the same meaning as in the Finance Act,* 1917.

3. *The statutory provisions and rules enumerated in the Schedule to these Rules shall, except so far as they are repugnant, apply to Munitions Exchequer Payments as they apply to Excess Profits Duty, and any reference to a person in such provisions and rules may as respects*

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[1] Page 409.

136. Regulations.—(contd.) *Munitions Exchequer Payments be read as if it were a reference to a Controlled Owner.*

4. *The provisions of the Munitions (Limitation of Profits) Rules,* 1915 (*hereinafter called* "*the Rules of* 1915"), *and the Munitions (Limitation of Profits) Rules,* 1915, (*Amendment*) *Rules,* 1917 (*hereinafter called* "*the Munitions Rules,* 1917"), *shall, except those of Rules* 6, 11, 12 *and* 13 *of the Rules of* 1915 *and Rule* 10 (ii) *of those Rules as set out in Rule* 4 *of the Munitions Rules,* 1917, *and except so far as they are repugnant to the provisions of the Act or as is by these Rules otherwise expressly provided, continue to apply to the assessment and collection of Munitions Exchequer payments. Provided that nothing in this Rule shall be held to deprive a Controlled Owner of any appeal in any matter in which an appeal to the Referee is allowed by the Rules of* 1915, *as amended by the Munitions Rules,* 1917.

5. *Returns and penalties* (*page* 381).

6. *Collection of sums assessed by Minister of Munitions* (*page* 390).

7. *Adoption of standard and allowances agreed with Minister* (*page* 384).

8. *Appeals against Commissioners' assessment* (*page* 386).

9. *do. do.* (*page* 387).

10. *do. Minister's assessments* (*page* 391).

11. *Reference to Minister or Referee* (*page* 393).

12. *Application of Finance* (*No.* 2) *Act,* 1915, *s.* 45 (6) (*page* 394).

13. *Final adjustment of provisional allowances* (*page* 373).

14. *Use of returns, amounts, etc.* (*page* 381).

15. *Deposits to satisfy Levies or Excess Profits Duty* (*page* 394).

R. V. NIND HOPKINS,
Secretary.

SCHEDULE

136. Regulations.—(*contd.*)

Finance (*No.* 2) *Act*, 1915—

Section 44, *subsection* (3).
Section 45, *subsection* (1).
Section 45, *subsection* (3).

Finance Act, 1916—
Section 54.

Regulations prescribed by the Commissioners of Inland Revenue under Section 45 *subsection* (7) *of the Finance* (*No.* 2) *Act*, 1915—

Regulation 1 *and the Schedule to the regulations except so far as the Schedule relates to Section* 10, *subsection* (2), *of the Finance Act*, 1914, *and Section* 31 *of the Finance* (*No.* 2) *Act*, 1915.
Regulation 2.
Regulation 3.
Regulation 4.
Regulation 11 *down to and including the words " the first assessment."*

137. Penalties.

137. For failure to deliver any information required by the Minister of Munitions (or the Commissioners of Inland Revenue[1]) or to comply with any of the provisions of the Munitions of War Act, 1915, or the Rules, a fine not exceeding £50 may be imposed by the munitions tribunal for each offence. This fine may also be imposed on officers of a company knowingly parties to the offence. For false statements, three months' imprisonment or a fine not exceeding £50 may be imposed on the person concerned by process under the Summary Jurisdiction Acts.

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[1] See Rule 140.

137. Penalties. —(*contd.*)

PROCEDURE FROM 2ND AUG., 1917.

The penalty for failure to furnish a proper return or other particulars required is a fine not exceeding £100 and £10 for every day during which the default continues after conviction.

If any person acts in contravention of, or fails to comply with any such rules, he shall be guilty of an offence against this Act. (*Munitions of War Act,* 1915, *s.* 11 (2).)

If any employer, or the owner of any establishment or any workman, for the purpose of evading any provision of this Act, makes any false statement or representation, or gives any false certificate, or furnishes any false information, he shall be guilty of an offence under this Act. (s. 12.)

For section 12 *of the principal Act the following section shall be substituted—*

"*If any person make any false statement or representation, or gives any false certificate, or furnishes any false information—*

(a) *for the purpose of evading any provision of this Act; or*

(b) *in any proceedings before any munition tribunal, arbitration tribunal, Referee, or Board of Referees under this Act or the rules made thereunder;* . . .

he shall be guilty of an offence and liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months or to a fine not exceeding fifty pounds." (*Munitions of War* (*Amendment*) *Act,* 1916, *s.* 14.)

Any person guilty of an offence under this Act—

(e) *shall, if the offence is a contravention of or failure to comply with any other provisions of this Act, be liable* *in respect of each offence to a fine not exceeding fifty pounds.* (*Munitions of War Act,* 1915, *s.* 14 (1).) **137. Penalties.**—(*contd.*)

Any failure to comply with any provision of these Rules after being required so to do by the Minister shall be an offence under the Act. (*Munitions* (*Limitation of Profits*) *Rules,* 1915, *No.* 19.)

In the case of a company being guilty of an offence under the principal Act, every director, manager, secretary, or other officer of the company, who is knowingly a party to the contravention or non-compliance constituting the offence shall also be guilty of the offence and liable to the like fine as the company. (*Munitions of War* (*Amendment*) *Act,* 1916, *s.* 18 (4).)

PROCEDURE FROM 2ND AUG., 1917.

If any person fails to furnish a proper return in accordance with this section or to comply with any requirement of the Commissioners under this section, or to give any notice required by this section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor. (*Finance* (*No.* 2) *Act,* 1915, *s.* 44 (2).)

138. The Acts provide for the abrogation of any Act or other legal requirement so far as it would prevent compliance with the section imposing the levy. They further bind officials to secrecy and permit other Government Departments to perform any duties imposed on the Ministry of Munitions. **138. Secrecy.**

188. Secrecy.—(contd.)

The owners of an establishment shall have power, notwithstanding anything in any Act, Order, or deed under which they are governed, to do all things necessary for compliance with any provisions of this section, and any owner of an establishment shall comply with any reasonable requirements of the Minister of Munitions as to information or otherwise made for the purposes of this section, and, if he fails to do so, shall be guilty of an offence under this Act. (*Munitions of War Act*, 1915, s. 4 (6).)

If any person, except as authorized by the Minister of Munitions, discloses or makes use of any information given under section eleven[1] *of the principal Act, as amended by this or any subsequent enactment, he shall be guilty of a misdemeanour and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine, or to both imprisonment and a fine.* (*Munitions of War* (*Amendment*) *Act*, 1916, s. 16 (2).)

The Minister of Munitions may make arrangements with any other Government department for the exercise and performance by that department of any of his powers and duties under the principal Act or this Act which appear to him to be such as could be more conveniently so exercised and performed, and in such case the department and the officers of the department shall have the same powers and duties for the purpose as are by the principal Act and this Act conferred on the Minister of Munitions and his officers. (*s.* 20.)

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[1] Page 402.

CHAPTER XX

The Combined Effect of Munitions Levies and Excess Profits Duty Charges and the Transfer of Jurisdiction to the Commissioners of Inland Revenue

THE LARGER CHARGE ADOPTED—CESSATION OF MUNITIONS LEVIES—TRANSFER OF JURISDICTION —GENERAL CONSIDERATIONS—MUNITION LEVIES NOT CHARGES IN ACCOUNTS FOR EXCESS PROFITS DUTY PURPOSES—CHARGES FOR INCOME TAX PURPOSES—MUNITIONS ACTS REFEREES TO ACT.

139. Munitions Levy and Excess Profits Duty.

139. As regards profits arising from the date of control to 31st December, 1916, the liability of controlled concerns by way of

(*a*) Munitions Acts' Levies, and

(*b*) Excess Profits Duty,

is whichever is larger of the sums payable under (*a*) or (*b*) if each is computed separately. Any payment under one head may be set against liability under the other head.

As regards profits arising after 31st December, 1916, the Munitions Acts' Levies cease to exist. Excess Profits Duty remains chargeable. The profits of accounts covering periods before and after 31st December, 1916, must be apportioned according to the lengths of the respective periods.

The Commissioners of Inland Revenue may treat any sums actually paid in respect of Munitions Exchequer Payments, which appear to the Commissioners to be attributable to the same period and subject matter as that for

139. Munitions Levy and Excess Profits Duty.—(*contd.*)

which Excess Profits Duty is to be paid, as a payment on account of Excess Profits Duty, or, if the amount of the Munitions Exchequer Payments is larger than the amount payable as Excess Profits Duty, as extinguishing the duty for the purposes of collection ; and may arrange with the Minister of Munitions, if in any case Excess Profits Duty is paid before the Munitions Exchequer Payment, for the deduction of Excess Profits Duty payments from any sums to be collected in respect of Munitions Exchequer Payments which appear to the Commissioners to be attributable to the same period and subject matter as that for which the Excess Profits Duty payments have been made, or, if the amount of the Excess Profits Duty payments is greater than the amount to be collected on account of munitions Exchequer payments, for the extinction of the amount to be so collected.

For the purpose of determining the period to which any profits are to be attributed under this section, profits shall be deemed to accrue from day to day at a uniform rate. (*Finance Act,* 1916, s. 48 (1).)

In this Part of this Act the expression "Munitions Exchequer Payments" means any sums paid into the Exchequer under section four of the Munitions of War Act, 1915, *on account of the excess of the net profits of a controlled establishment.* (*Finance Act,* 1916, s. 57.)

The provisions of section four of the Munitions of War Act, 1915, *with respect to Munitions Exchequer Payments shall not apply to any profits arising after the thirty-first day of December, nineteen hundred and sixteen or apportioned under this Act to the period after that date.* (*Finance Act,* 1917, s. 24 (1.)

Where part of an accounting period or of an accounting year, or of any period in respect of part of which Munitions Exchequer Payments are chargeable, is after, and part

130. Munitions Levy and Excess Profits Duty.—*(contd.)*

before, the beginning of the first day of January, nineteen hundred and seventeen, the total excess profits and any deficiencies or losses arising in any such accounting period, and the total excess rent for any such accounting year, and the total profits in respect of part of which Munitions Exchequer Payments are chargeable, shall be apportioned between the time up to, and the time after, that date in proportion to the number of months or fractions of months before and after that date respectively. (*Finance Act,* 1917, *s.* 27.)

PROFITS ARISING BETWEEN THE DATE OF CONTROL AND 31ST DECEMBER, 1916

It will be noted that, in any cases in which the Munitions Levy period is not coincident with the Excess Profits Duty period, the profits are to be taken as accruing at a uniform daily rate within the period.

Where the Excess Profits Duty charge is larger than the Munitions levy, the former will be worked out on the ordinary rules shown in this book, the exact Munitions Act liability not being of importance.

Where the converse is the case, the Munitions Acts, of course, become of greatest importance, and an entirely different position arises inasmuch as these Acts differ considerably from the Excess Profits Duty Acts alike in structure and intent. The sole object of the latter is to raise revenue, but that of the latter, primarily, is to secure as large an output of munitions as possible. While the discretionary powers of the Commissioners of Inland Revenue in regard to Excess Profits Duty are very

139. Munitions Levy and Excess Profits Duty.—(*contd.*)

large, they may only be exercised within the limits of certain well-established principles and with the object of securing a fair comparison of pre-war with during-war profits. The powers of the Minister of Munitions are of an entirely different nature, and are clearly susceptible of use in a general "bargain" which may mainly concern matters quite foreign to questions of accountancy and the raising of revenue. For example, Rule 125 makes possible a considerable reduction of the leviable "excess," but the Minister is to decide what is a "reasonable return" in respect of increased output. Further still, he is to decide whether the allowance is to be in addition to or in lieu of the 20 % excess already allowed. It seems likely that the record of the concern in the way of munition-producing may become (if it is not actually intended to become) an element in the case on which the discretionary powers are to be exercised. Such matters as these go out beyond accountancy. It has been promised that allowances made by the Commissioners of Inland Revenue shall not be less favourable than would be made by the Minister of Munitions.

PROFITS ARISING AFTER 31ST DECEMBER, 1916

From this date the Excess Profits Duty rate was raised to 80 per cent., and the need for the Munitions Levy ceased.

140. Transfer to Commissioners of Inland Revenue.

140. From the date (2nd Aug., 1917) of the passing of the Finance Act, 1917, all undischarged liability (to 31st December, 1916) to the Munitions Levy is to be

assessed and collected by the Commissioners of Inland Revenue, instead of by the Minister of Munitions.

140. Transfer to Commissioners of Inland Revenue.—(*contd.*)

The basis of such liability is not affected, but the procedure is varied. The effect of such variation has been incorporated in due order in Chapters XIX and XX.

Munitions Exchequer Payments arising on or before the thirty-first day of December, nineteen hundred and sixteen, or apportioned under this Act to the period down to and including that date shall, after the passing of this Act, be assessed and collected, or, if already assessed but not collected, collected, by the Commissioners and shall be computed by them in accordance with the provisions of that Act and the rules made thereunder, and the Commissioners shall for those purposes have all the powers of the Minister of Munitions, including the power of making rules.

For the purposes of such assessment and collection, the provisions for the time being in force with respect to the assessment and collection of Excess Profits Duty (including provisions as to returns and penalties, but excluding provisions imposing any charge of duty or as to the computation of duty) shall apply, and rules may be made by the Commissioners accordingly, and the provisions of section forty-eight of the Finance Act, 1916, *relating to the adjustment of Excess Profits Duty and Munitions Exchequer Payments, shall apply subject to such modifications as may be necessary in consequence of the transfer of powers effected by this subsection.*

Any rules made by the Commissioners may specify matters which may be referred to the Minister, or to a referee or board of referees appointed by him, and prescribe the manner in which such cases are to be referred. (*Finance Act,* 1917, *s.* 24(2).)

141. Relations to Excess Profits Duty and Income Tax.

141. Rules 51 to 53 apply also to Munitions Acts' Levies, both as to the prohibition of deductions, in computing liability to Excess Profits Duty, for sums paid as Munitions Acts' Levies, and as to the allowance of such deductions in computing liability to Income Tax.

Section thirty-five[1] *of the principal Act* (*which relates to the computation of profits and gains for the purpose of Income Tax in relation to Excess Profits Duty*) *shall apply to sums actually paid in respect of Munitions Exchequer Payments as it applies to Excess Profits Duty, except that the relief to the taxpayer under subsection* (2) *of that section shall in all cases be given by means of repayment and not by deduction.* (*Finance Act,* 1916, *s.* 53.)

Any Excess Profits Duty and any Munitions Exchequer Payments which are remitted under this section for the purpose of collection shall not be deemed to have been paid for the purposes of section thirty-five[1] *of the principal Act* (*which relates to computation of profits and gains in relation to Excess Profits Duty*) *as extended by this Act.* (*Finance Act,* 1916, *s.* 48 (2).)

Deductions shall not be allowed on account of Munitions Exchequer Payments in computing profits for the purpose of Excess Profits Duty. (*s.* 48 (3).)

142. Munitions Referees.

142. In the case of controlled concerns, any applications regarding Excess Profits Duty under Rules 64 to 67 are to be referred to the Referees appointed under the Munitions Acts (*Rule* 134) and not to the Referees appointed by the Treasury.

Subsection (3) *of section forty*[2] *of the principal Act* (*which provides amongst other things for the reference of*

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[1] Page 190. [2] Page 227.

certain matters for the decision of a Board of Referees), shall, where the application for such a reference is made in respect of a trade or business carried on in a controlled establishment within the meaning of Part II of the Munitions of War Act, 1915, *and relates to an accounting period during any part of which the establishment has been so controlled, and to the postponement or suspension of renewals or repairs, or to exceptional depreciation or obsolescence of assets, or to the necessity in connection with the present war of providing plant, have effect as though a Referee or Board of Referees appointed or designated by the Minister of Munitions for the purpose were substituted for the Board of Referees under the principal Act.* (*Finance Act,* 1916, *s.* 55.)

142. Munitions Referees.—(*contd.*)

See also Rule 30 *as regards Munition Works.*

See Rules 60 to 67 as regards Depreciation, Obsolescence, Exceptional Depreciation or Obsolescence, etc.

PART III

EXCESS MINERAL RIGHTS DUTY

CHAPTER XXI

Excess Mineral Rights Duty

WHEN PAYABLE—RIGHTS FORMING PART OF THE ASSETS OF A BUSINESS—THE BASIS OF ASSESSMENT—THE PRE-WAR STANDARD—PRE-WAR RENT VALUES—PAYMENTS TO SUPERIOR LESSEES—NO DEDUCTION FOR MINERAL RIGHTS DUTY—DEDUCTION FOR INCREMENT VALUE DUTY—RETURNS—ASSESSMENTS—APPEALS—PAYMENT OF DUTY.

143. Minerals: when charged.

143. Excess Mineral Rights Duty is chargeable where the rent payable for the right to work minerals, or in respect of any mineral wayleaves, varies according to the price of the minerals.

Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business)[1] *varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in this section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any Mineral Rights Duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by*

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[1] See Finance Act, 1916, s. 46 (2), next page.

that person (*in this section referred to as the person liable*) *an amount equal to* 50 *per cent. of that excess.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 43 (1).)

143. Minerals: when charged.—(*contd.*)

144. No duty is chargeable where the right or wayleave is part of the assets of the trade or business of the person receiving the rent.

144. Minerals included in E. P. D. assessment.

See s. 43 (1) printed above. Also—

It is hereby declared that the words in subsection (1) *of section forty-three of the principal Act " assets of any trade or business " refer only to assets of the trade or business of the person receiving the rent for the right to work the minerals or for the mineral wayleaves.* (*Finance Act,* 1916, *s.* 46 (2).)

The point here is that the trade or business may be reviewed for purposes of Excess Profits Duty. It is therefore unnecessary to review a section of the business for purposes of Excess Mineral Rights Duty.

Murray v. Commissioners of Inland Revenue (*Court of Appeal,* 1918). It was held that the right to work the minerals could not be regarded as part of the assets of the trade or business of the owner of the right, in the case in which the owner did not work the minerals but let them on lease to two colliery companies.

(For a further decision in this case, see under Rule 147.)

145. The duty payable is 50 %, 60 %, 80 %, or 40 %, of the excess of the rent of the accounting year over the pre-war standard of rent. The accounting year is any working year ending after 4th August, 1914.

145. Rates of duty.

145. Rates of duty. —(*contd.*)

As regards any accounting year ending after 31st December, 1916, the duty is required to be restricted, if necessary, so that the actual rent in the year is not reduced thereby below the actual average rent in the pre-war standard years. If the former is less than the latter no duty is payable.

The rate is 50% for the first accounting year, and 60% thereafter except as regards excesses arising[1] after 31st December, 1916, in respect of which the rate is 80% until 1st January, 1919, when the rate becomes 40% until 31st December, 1919, then 60%. In the case of minerals which have become subject to a mining lease after 4th August, 1914, the rate is 60% from the commencement up to 31st December, 1916.

See Finance (No. 2) Act, 1915, s. 43 (1), set out on previous page. Also—

Section forty-three of the principal Act (which relates to Excess Mineral Rights Duty) shall have effect as if sixty per cent. of the excess were substituted as the rate of duty for fifty per cent. of the excess, in the case of minerals which have become subject to a mining lease after the fourth day of August nineteen hundred and fourteen, for all accounting years, and in the case of other minerals for any accounting year ending after the completion of the first accounting year, and any additional duty may be recovered accordingly. (*Finance Act*, 1916, s. 46 (1).)

Section forty-three of the principal Act (which relates to Excess Mineral Rights Duty) shall have effect as if eighty per cent. of the excess were substituted as the rate of duty

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[1] See Finance Act, 1917, s. 27, page 18.

145. Rates of duty.—(contd.)

for sixty per cent. for any accounting year commencing on or after the first day of January nineteen hundred and seventeen, or, in the case of an accounting year which commenced before that date but ends after that date, as if eighty per cent. were substituted for sixty per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date, and any additional duty may be recovered accordingly.

Provided that where it is shown to the satisfaction of the Commissioners that the amount payable as rent under any lease or agreement for a lease for any accounting year in respect of which or any part of which Excess Mineral Rights Duty is payable at the rate of eighty per cent. is not greater than the average amount payable as rent for the two pre-war years, the prices in which are selected by the taxpayer for the purpose of determining the pre-war rent values of the rent for the accounting year, or would be reduced below that amount by the payment of Excess Mineral Rights Duty, no Excess Mineral Rights Duty or, as the case may be, such an amount of Excess Mineral Rights Duty only as will reduce the amount payable as rent for the accounting year to the said average amount, shall be paid for that accounting year. (*Finance Act*, 1917, s. 21.)

As regards 1918, *see Finance Act*, 1918, *s.* **34**, *after Rule* 4.

Section forty-three of the principal Act (*which relates to Excess Mineral Rights Duty*) *shall have effect as if forty per cent. of the excess were substituted as the rate of duty for eighty per cent. for any accounting year commencing on or after the first day of January, nineteen hundred and nineteen, or, in the case of an accounting year which commenced before that date but ends after that date, as if forty per cent. were substituted for eighty per cent. as*

145. Rates of duty.—(contd.)

respects so much of the excess as may be apportioned under this Part of this Act to the part commencing on that date. (*Finance Act*, 1919, s. 33 (1).)

The proviso to section twenty-one of the Finance Act, 1917, *shall apply to any accounting year in respect of which or any part of which Excess Mineral Rights Duty is payable at the rate of forty per cent., and applies where the said duty is payable at the rate of eighty per cent.* (*S.* 33 (2).)

See example on page 419.

Section forty-three of the principal Act (which relates to Excess Mineral Rights Duty) shall have effect as if sixty per cent. of the excess were substituted as the rate of duty for forty per cent. for any accounting year commencing on or after the first day of January, nineteen hundred and twenty, or, in the case of an accounting year which commenced before that date but ends after that date, as if sixty per cent. were substituted for forty per cent. as respects so much of the excess as may be apportioned under this Act to the part commencing on that date, and any additional duty may be recovered accordingly.

The proviso to section twenty-one of the Finance Act, 1917, *shall apply to any accounting year in respect of which or any part of which Excess Mineral Rights Duty is payable under this Part of this Act at the rate of sixty per cent., as it applies where the said duty is payable at the rate of eighty per cent.* (*Finance Act*, 1920. s. 49 (1 *and* 2).)

146. Pre-war standard.

146. The pre-war standard of rent is the average of any two of the three last pre-war rent values, selected by the taxpayer. Where the minerals have not been worked or the wayleaves have not been let in those years, or where there are no proper data, the Commissioners of Inland Revenue may fix the standard, subject to appeal.

The pre-war standard of rent shall, for the purposes of this section, be taken to be the average of any two of the three last pre-war rent values to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I of the Finance (1909-10) *Act,* 1910. (*Finance* (*No.* 2) *Act,* 1915, *s.* 43 (2).)

146. Pre-war standard.—(*contd.*)

See notes on Rule 147.

Duke of Northumberland v. Commissioners of Inland Revenue (*House of Lords,* 1920). The pre-war standard of rent is the average rental value of any of the two of the last three pre-war years. As the rate of Income Tax in the pre-war years was lower than during the accounting period, liability would be decreased by the adoption of the net rental value after deduction of tax. It was found that, as for Mineral Rights Duty purposes, Income Tax must be deducted, a different principle could not be applied to the Excess Mineral Rights Duty. It was held, however, that the rate of tax must be that applicable to the accounting period.

148. Pre-war standard.—(contd.)

Lord Cave: "Section 43 provided that, for the purpose of ascertaining the excess royalties assessable to duty, a comparison should be made between two sums—first, the amount of the royalties payable in respect of the accounting year, and, secondly, the sum to which the royalties for the same accounting year would amount if the royalties for that year were based on the average prices for the selected pre-war years, and that if the former sum exceeded the latter, duty was to be paid on the difference. In this calculation nothing was to turn on the profits which were, or on any hypothesis would have been, made in any of the previous years. Each factor in the comparison was to be based upon the actual output of the accounting year; and, although the second factor was to be ascertained on the hypothesis that the average pre-war price remained unaltered, the result was treated as the hypothetical rest for the accounting and not for the pre-war year. It followed that in both branches of the comparison one was still in the accounting year."

"The tax paid on the first factor in the calculation—the actual royalties for the accounting year—must, of course, be at the rate current in that year; and the tax treated as paid on the second factor—the hypothetical royalties for the same accounting year—must in my opinion be at the same rate. The result was that the tax to be deducted on both sides must be that of the accounting year and no other."

147. The pre-war rent value for each of the three years is the amount which the rent of the accounting year would equal if it were based on the average prices governing the rent in the year concerned.

147. Pre-war rent value.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average prices governing the payment of the rent in that year. (*Finance* (*No.* 2) *Act,* 1915, *s.* 43 (2).)

The first thing to do, in calculating Excess Mineral Rights Duty, is to state the result of the working year ended after 4th August, 1914. For example—

	£	*s.*	*d.*
500 tons of ore at royalty of 6s. 0d. =	150	0	0
1,000 ,, ,, ,, ,, 6s. 6d. =	325	0	0
750 ,, ,, ,, ,, 7s. 0d. =	262	10	0
2,250 tons	£737	10	0

Next, it must be ascertained what the royalties on 2,250 tons would have amounted to at the rates in force in each of the best two of the three preceding working years. The data may be taken as follows—

			£
1st preceding year :	1,500 tons ;	total royalties	225
2nd ,, ,,	1,000 ,,	,, ,,	125
3rd ,, ,,	1,400 ,,	,, ,,	245

147. Pre-war rent value.—(*contd.*)

The average royalty per ton will then be found—

1st preceding year . .	3s. 0d. per ton
2nd ,, ,, . .	2s. 6d. ,,
3rd ,, ,, . .	3s. 6d. ,,

The highest royalties per ton were paid in the 1st and 3rd preceding years. 2,250 tons in each of those years would have produced—

1st preceding year : 2,250 tons @ 3s. 0d. = £337 10s. 0d.
3rd ,, ,, ,, ,, ,, 3s. 6d. = £393 15s. 0d.

and these are the pre-war rent values.

The tax due is calculated as follows—	£	*s.*	*d.*
Royalty in working year ended after commencement of war .	737	10	0
Pre-war standard of rent $\dfrac{£337\ 10s.\ 0d. + £393\ 15s.\ 0d.}{2}$ =	365	12	6
Excess =	£371	17	6
Duty (at 50%) =	£185	18	9

Murray v. Commissioners of Inland Revenue (*Court of Appeal,* 1918). In this case the proprietor of minerals let them on lease to two colliery companies at rents or royalties which varied with the prices of the minerals. It was held that liability to Excess Mineral Rights Duty should be computed by applying the average prices for the pre-war years selected to the output on each accounting year, and by deducting the result from the actual rent received for the accounting year so far as it varied according to the prices of the minerals. **147 Pre-war rent value.** —(*contd.*)

(For a further decision in this case, see under Rule 144.)

Commissioners of Inland Revenue v. Lonsdale's (Earl) Settled Estate Trustees (*Court of Appeal,* 1919). In pre-war years the lessors of coal mines were entitled to a fixed royalty per ton, unless the selling price of coal exceeded 6s. 6d. per ton. In April, 1915, 7s. 6d. was substituted for 6s. 6d. It was held that the basis of 6s. 6d. per ton must come into the average prices governing the payment of the rent for purposes of fixing the pre-war standard.

The Court of Appeal further decided that it would not interfere with the Referee's decision in giving or refusing costs to either party.

148. Payments to superior lessors.

148. Any amount payable (in the accounting year) by the lessee of the minerals or wayleaves to a superior lessor, must be deducted from the rent receivable by the lessee, and a corresponding deduction must be made in computing pre-war rent values.

Any amount payable in any accounting year by the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves shall be treated as a deduction from the amount payable to the lessee as rent for that year, and in computing the pre-war rent values a corresponding deduction shall be made on account of any such rent. (*Finance* (*No.* 2) *Act*, 1915, s. 43 (3).)

149. Relations to other duties. 149. The duty is payable in addition to any Mineral Rights Duty. Any Increment Value Duty payable annually is, when paid, to be treated as a deduction from the rent payable in the year in which that duty is paid; a corresponding deduction must be made in computing the pre-war standard of rent.

Any Increment Value Duty payable annually under Section 22 *of the Finance* (1909-10) *Act*, 1910, *shall, when paid, be treated as a deduction from the rent payable to any person in the year in which the duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.* (*Finance* (*No.* 2) *Act*, 1915, s. 43 (4).)

(*Increment Value Duty is repealed and all payments on account thereof may be reclaimed—Finance Act*, 1920, s. 57 (1).)

150. Assessment, recovery, and returns. 150. The duty is to be assessed by the Commissioners of Inland Revenue, subject to appeal. It is recoverable as a debt due to the Crown. Returns may be required.

Any duty payable under this section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which an assessment of duty by the Commissioners under Part I of the Finance (1909–10) *Act*, 1910, *is subject, and shall be recoverable as a debt due to His Majesty from that person.* (*Finance* (*No.* 2) *Act*, 1915, s. 43 (5).)

Subsection (3) *of Section* 20 *of the Finance* (1909–10) *Act*, 1910, *shall extend so as to authorize particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable thereunder, and of such other particulars as to the minerals or wayleaves as the Commissioners* *may require for the purpose of this section.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 43 (6).)

150. Assessment, recovery, and returns.—(*contd.*)

Expressions to which a special meaning is attached by Part I of the Finance (1909–10) *Act,* 1910, *shall have the same meaning in this section.* (*Finance* (*No.* 2) *Act,* 1915, *s.* 43 (7).)

PART IV

SUMMARY OF RULES

CHAPTER XXII

PART I.—EXCESS PROFITS DUTY

CHAPTER I

THE BASIS OF LIABILITY

1. THE duty payable is a percentage (*see Rule* 4) of the amount by which the profits of the period concerned exceed the " pre-war standard of profits." If the excess is not larger than £200 no duty is payable. If the excess is larger than £200, the first £200 of that excess escapes assessment. (*Page* 1.)

2 (*a*) 1ST JANUARY, 1917, TO 31ST DECEMBER, 1919.

As regards any accounting period ended after 31st December, 1916, and before 1st January, 1920, the margin or allowance may be increased beyond £200 where the profits (adjusted as regards increased or decreased capital) of the accounting period are less than £2,000.

The increase is required to equal one-fifth of the difference between such profits and £2,000. If there are no profits the increase is one-fifth of £2,000, irrespective of the amount of loss.

If the standard exceeds £500, the increase is *reduced* by the amount by which the standard exceeds £500. (*Page* 5.)

(*b*) From 1st January, 1920.

As regards periods ended after 31st December, 1919, the £2,000 limit and £500 standard previously applicable to this concession are increased to £4,000 and £2,000 respectively. The illustrations given above apply, with the substitution of these figures. Not only is the allowance increased to one-fifth of the difference between the profits and £4,000 (instead of £2,000), but the allowance is not decreased unless the standard is larger than £2,000. (*Page* 6.)

(*c*) Ex-members of the Forces.

For all periods the margin of £200 becomes £500 in certain circumstances. (*Page* 6.)

3. If the period concerned is less than a year the margin or allowance, whether it is £200 or £200 plus an allowance under Rule 2, is proportionately reduced. In such a case, also, the " pre-war standard of profits " is reduced in the same proportion. (*Page* 13.)

4. The proportion of the excess (less allowance) payable as duty is 50 per cent., 60 per cent., or 80 per cent., according to the period concerned, viz.—

Businesses set up on or before 4th August, 1914.	50 per cent. for the first twelve months from the first day of the first accounting period (see Rule 15), then 60 per cent. of any excess arising to 31st December, 1916, then 80 per cent. of any excess arising to 31st December, 1918, then 40 per cent. of any excess arising to 31st December, 1919, then 60 per cent.

Businesses set up after 4th August, 1914.	50 per cent. for the whole of any accounting period ended on or before 4th August, 1915, 60 per cent. for any subsequent accounting period, provided that 80 per cent. is charged in respect of any excess arising after 31st December, 1916, then 40 per cent. of any excess arising to 31st December, 1919, then 60 per cent.

Where an account covers part of a period chargeable at one rate and part of a period chargeable at another rate, the excesses or deficiencies are to be apportioned according to the respective lengths of time. (*Page* 15.)

5. In computing the tax due in respect of the excess of any accounting period, an allowance is to be made in respect of any deficiencies of previous accounting periods. Similarly, when a deficiency occurs in an accounting period, repayment is to be made of a corresponding amount of the duty paid in respect of earlier periods.

The amount allowed or repaid in respect of any deficiency is to be computed at 50 per cent., if the period in which the deficiency occurred was subject to the 50 per cent. rate, at 60 per cent. if the said period was subject to the 60 per cent. rate, and at 80 per cent. if the said period was subject to the 80 per cent. rate. For the purposes of repayment any sum paid as Munitions Levy is to be treated as a payment of Excess Profits Duty. (*Page* 28.)

6. Where the net result of the three last pre-war trade years has shown a loss, a deduction is allowed from the profits of the accounting period equal to the

amount of the profits thereof which have been applied in extinction of that loss, provided that—

(1) the percentage standard has been adopted; or

(2) that the capital (as estimated for Excess Profits Duty purposes) is a minus quantity. (*Page* 34.)

7. When a person carries on two businesses, he is allowed to set a deficiency in one against an excess in the other if the deficiency and excess occur concurrently. (*Page* 39.)

8. Where a company holds all the ordinary capital of a second company which the law allows it to hold, and both companies carry on the same trade or business, they are to be treated as one concern, the second company being regarded as a branch of the first. (*Page* 42.)

CHAPTER II

WHAT PERSONS AND CLASSES OF BUSINESS ARE CHARGEABLE

9. THE persons chargeable to Excess Profits Duty are—

(*a*) Those who ordinarily reside in the United Kingdom (in respect of concerns owned or carried on by them in this country or elsewhere);

(*b*) All other persons (in respect of concerns carried on in the United Kingdom). (*Page* 46.)

10. Bodies politic, corporate, or collegiate, and companies, fraternities, fellowships or societies of persons (whether corporate or not corporate) are chargeable. The trustees, guardians, tutors, curators or committees directing the affairs of persons under age or of insane persons are also chargeable. (*Page* 49.)

11. The business of a firm is chargeable in one sum irrespective of any other business carried on by the partners. (*Page* 50.)

12. The High Court has declared *ultra vires* a regulation to the following effect—

Where a foreign person residing abroad carries on business with a person resident in this country, and the course of business does not, by reason of the close connection between the parties, bring such profit to the resident as might ordinarily be expected to arise, the actual profits arising to the non-resident out of that business may be estimated and assessed. (*Page* 50.)

13. Duty is chargeable on all trades or businesses of any description, whether they are continuously carried on or not. (*Page* 52.)

14. Persons taking commissions, also agents, are expressly included in the charge. (*Page* 57.)

15. The following sources of income are not subject to duty—

(*a*) Husbandry in the United Kingdom;

(*b*) Offices or employments;

(*c*) Professions whose profits are dependent mainly on personal qualifications and which require little or no capital.

(*d*) Concerns which, by reason of being unable to pay debenture holders or creditors, are being carried on by a liquidator, receiver, or trustee under the Court—until provision has been made for the payment of such creditors, etc. (*Page* 63.)

CHAPTER III

PERIODS AND ACCOUNTS CONCERNED

16. THE profits shown in all accounts " made up " (not necessarily formally) to dates later than 4th August, 1914, are required to be reviewed for purposes of Excess Profits Duty. The period covered by such an account is called an " accounting period." (*Page* 77.)

17. The closing day of the accounting period may be fixed by the Commissioners of Inland Revenue—

(*a*) Where accounts have not been made up for any definite period;

(*b*) Where accounts have not been made up for the period for which they are usually made up;

(*c*) Where a year or more has elapsed without accounts being made up.

The accounting period ended on the day so fixed by the Commissioners of Inland Revenue may not be shorter than six months or more than a year. (*Page* 85.)

18. For purposes of comparing "during-war profits" with "pre-war profits," the last pre-war trade year must be taken to have ended when the first "accounting period" began. (*Page* 88.)

CHAPTER IV

PRE-WAR STANDARD OF PROFITS

19. THE pre-war standard of profits may be arrived at in either of two ways. The first method results in a profits standard (*Rule* 20) and the second in a percentage standard (*Rule* 24). In the case of small concerns, a "substituted standard" is sometimes permitted (*Rule* 31). The taxpayer aims at a high standard. (*Page* 90.)

20. In order to arrive at the profits standard the taxpayer selects two out of the last three pre-war trade years and ascertains their average profit. The result constitutes the profits standard. (*Page* 90.)

21. In ascertaining the profits standard the profits of pre-war trade years must be computed under the same

rules under which the profits of the accounting period are computed. (*Page* 91.)

22. The taxpayer may take as his profits standard the average profits of any four out of the last six pre-war trade years where both of the following conditions apply—

(*a*) The Commissioners of Inland Revenue must be satisfied that the last three pre-war trade years were years of abnormal depression;

(*b*) The average profits of the last three pre-war trade years must be at least 25 per cent. lower than the average profits of the three years preceding them. (*Page* 92.)

23. Where the Commissioners of Inland Revenue are satisfied that a concern includes two or more independent industries carried on in separate establishments and with substantially separate accounts they may, in computing the profits standard for the purpose of dealing with any accounting period ending after 31st December, 1916, ignore losses made in any pre-war year in any of the industries. (*Page* 94.)

24. The percentage standard is the "statutory percentage" on the capital of the concern at the end of the last pre-war trade year. (*Page* 97.)

25. The percentage standard is usually adopted when it is higher than the profits standard. (*Page* 97.)

26. The statutory percentage is 6 per cent. in the case of a company or other body corporate. It is 7 per cent. in other cases (*i.e.*, sole traders and partnerships), except as regards accounting periods ending after 31st December, 1916, when it is 8 per cent.

For accounting periods ending after 31st December, 1919, certain private companies whose directors have a controlling interest may claim the 8 per cent.

granted to sole traders and partnerships. (*Page* 99.) (See Rule 50.)

27. The Board of Referees may, on application, order the increase of the statutory percentage as respects any class of trade or business. Any increase ordered is to be in addition to any increased percentage allowed as regards accounting periods ended after 31st December, 1916. (Rules 26, 34, and 98.) The Referees may, on application, reopen a case and vary their previous order thereon. (*Page* 103.)

28. The Board of Referees have prescribed the procedure to be followed as regards applications to them. (*Page* 111.)

29. The Board of Referees may, on application, order the calculation of the percentage standard to be by reference to some factor other than the capital. This rule applies only to a class of trade or business whose nature is such that the capital employed is small compared with the capital necessarily at stake. (*Page* 112.)

30. The Board of Referees may, on application, order an alteration of the standard of profits as regards a business wholly or mainly carried on for the purpose of the manufacture of war materials or for munition work. (*Page* 114.)

31. For any accounting period ended after 31st December, 1919, a concern may, in lieu of a profits standard or a percentage standard, claim a "substituted standard," based on a minimum allowance of £500 for each working proprietor. To the amount obtained by taking £500 for each working proprietor is added what would be the percentage standard of the concern, provided that the total substituted standard so arrived at does not exceed £750 for each working proprietor. (*Page* 116.)

CHAPTER V

NEW BUSINESS AND NEW PROPRIETORS

32. WHERE there have been two pre-war trade years but not three, the pre-war standard of profit is either the average profit of the two years or the profit of the last of them, at the option of the taxpayer. (*Page* 124.)

33. Where there has been one pre-war trade year but not two, the pre-war standard of profit may be based on the one year's trading. (*Page* 124.)

34. Where there has not been one pre-war trade year, the percentage standard must be adopted. It must be based on the average capital employed in the business during the first accounting period. As regards any accounting period ended after 31st December, 1916, 3% is added to the statutory percentage. As regards any accounting period ended after 31st December, 1919, 5% is added to the statutory percentage. (*Page* 125.)

35. In the case of an agency or a business involving capital of a comparatively small amount, which has not had three pre-war trade years, the three preceding rules are set aside for the following: The standard of profits shall be computed according to the profits of any previous business or occupation (of whatever nature) carried on by the person concerned; if that business has been continued the standard shall be computed according to the amount by which its profits have diminished. (*Page* 126.)

36. Where a business has changed ownership since the commencement of the three last pre-war trade years, the change must be regarded as the setting up of a new business unless the taxpayer makes application otherwise. In the latter case the rules must be modified if necessary in order to make the basis of the profits

standard the same as the basis of the computation of the profits of the accounting period. (*Page* 130.)

37. Where there has been a change in the constitution of a partnership, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to Referees. (*Page* 131.)

38. Where there has been a change of ownership during the accounting period the Commissioners of Inland Revenue have the option of splitting this period into two parts according to the respective ownerships, or of regarding the period as one period of business conducted by the last owner. (*Page* 132.)

CHAPTER VI

THE COMPUTATION OF PROFITS: GENERAL RULES

39. In ascertaining what profit has been made, for the purposes of Excess Profits Duty, a separate computation is to be made, irrespective of any computation required for any other purpose. In the absence of express direction on any matter the rules of the Income Tax Acts are to be observed. (*Page* 136.)

40. A partial allowance is made in respect of certain charitable, etc., subscriptions paid after 16th July, 1920. Except for this partial allowance, charitable subscriptions are deductible only where made for the benefit of the business (*e.g.*, contributions to hospitals by which employees may benefit), in which case they are allowable in full. (*Page* 146.)

41. The profits of the accounting period, with regard to which Excess Profits Duty is chargeable, are the actual profits arising in that period, and not the average profits of any other periods, nor even necessarily the "book-keeping" profit of the period concerned. (*Page* 147.)

42. The amount to be taken as profit for purposes of Excess Profits Duty is not to include sums payable to other persons in the way of interest, rent, royalties, etc. The proprietor's profit only is to be regarded. (*Page* 149.)

43. Any profits arising from lands or buildings owned by the concern and used in the business are to be taken into account. (*Page* 151.)

44. Income from investments may not form part of the profits for Excess Profits Duty purposes. *Rule* 88 *indicates exceptions in the cases of life assurance businesses and investment companies.* (*Page* 152.)

45. Expenditure for the development of the trade or otherwise in respect of the business may only be admitted if it is allowed under the Income Tax Acts, and, even then, only so much thereof may be admitted as appears to the Commissioners of Inland Revenue to be properly attributable to the period in question. (*Page* 158.)

46. No transaction or operation may serve to reduce artificially the amount of the profits. No fictitious or artificial transaction may be entered into with this object. Notice is required to be given if this has been done before the passage of the Act. A penalty of £100 may be imposed for non-compliance. (*Page* 160.)

47. Where any concern sells the particular assets which it is its business to manage, and purchase new

assets, the capital must be taken to have varied only by the difference between the selling price of the old assets and the purchase price of the new assets. (*Page* 161.)

CHAPTER VII

THE COMPUTATION OF PROFITS : THE RESTRICTION OF DEDUCTIONS FOR REMUNERATION OF OFFICIALS

48. THE general rule is that remuneration allowed to persons concerned in the management of a business for any accounting period may not exceed the corresponding amounts (or a proportionate part thereof, as the case requires) allowed in the last pre-war trade year.

But the Commissioners of Inland Revenue may depart from this rule in special circumstances or when the remuneration depends on profits. (*Page* 163.)

49. If Rule 48 is insisted upon as respects any accounting period ending on or after 1st July, 1915, the concern may recoup itself by recovery from the director or manager in question. Any sum so recovered is to be treated as having been paid by the director or manager. (*Page* 178.)

50. Where a percentage standard has been adopted, the Commissioners of Inland Revenue have power to regard any concern in which the directors or managers have a controlling interest as a firm, and the directors, etc., as partners. In this case no remuneration drawn by them may be allowed as deductions for Excess Profits Duty purposes. (*Page* 186.)

CHAPTER VIII

THE COMPUTATION OF PROFITS: THE EFFECT OF INCOME TAX AND COLONIAL AND FOREIGN TAXATION; ALSO THE EFFECT OF EXCESS PROFITS DUTY ON THE INCOME TAX COMPUTATION

51. In computing liability to Excess Profits Duty, no allowance is to be made on account of any payment of Excess Profits Duty or of Income Tax. (*Page* 189.)

52. In computing liability to Income Tax, an allowance is to be made for Excess Profits Duty. The allowance will be made against the profits of the year which included the end of the accounting period concerned. If it has not been practicable to make the allowance in this way the sum due may be set against Excess Profits Duty due or may be repaid. (*Page* 190.)

53. In computing liability to Income Tax, any amount of Excess Profits Duty repaid is to be added to the profits of the year in which the repayment is received. (*Page* 193.)

54. Payments made on account of foreign or colonial taxation may be deducted from the profits for Excess Profits Duty purposes. (See Rule 55, however, as regards Colonial Excess Profits Duty.) (*Page* 194.)

55. The Commissioners of Inland Revenue may make arrangements with the Government of any British Possession in which an Excess Profits Duty is chargeable, so that a concern shall pay only the amount of the duties in question (*i.e.*, the home or Colonial) whichever is larger.

Relief in respect of Colonial Excess Profits Duty may not be claimed under both Rules 54 and 55, but a concern may adopt whichever Rule is most advantageous. (*Page* 195.)

CHAPTER IX

THE COMPUTATION OF PROFITS : LONG CONTRACTS AND MATTERS IN SUSPENSE

56. The profits of a contract which extends over more than one accounting period must (unless, owing to special circumstances, the Commissioners of Inland Revenue otherwise direct) be properly apportioned over each period. (*Page* 199.)

57. Certain losses on contracts suspended owing to the war may be allowed against the profits of Accounting periods reviewed for Excess Profits Duty purposes. (*Page* 201.)

58. Doubtful debts may be valued, and any prospective loss written off ; but the matter must be very clear, and any writing off will be liable to subsequent revision. (*Page* 204.)

59. Matters in suspense by reason of their connection with late enemy countries, must be left open until official arrangements enable them to be settled. (*Page* 205.)

CHAPTER X

THE COMPUTATION OF PROFITS : WEAR AND TEAR, OBSOLESCENCE, POSTPONED RENEWALS, ETC.

60. Deductions for wear and tear, or for expenditure of a capital nature for renewals, may be allowed only so far as the Income Tax Acts would permit, and then only if the Commissioners of Inland Revenue consider such deductions to be properly attributable to the period in question. (*Page* 206.)

61. The Finance Act, 1918, permits application to the Referees by a number of persons who are dissatisfied with the amount of any Income Tax deduction for wear and tear. (*Page* 214.)

62. The allowance made as from 1918, in respect of the depreciation of certain buildings, does not vary the Excess Profits Duty charge. (*Page* 214.)

63. When obsolete plant or machinery is scrapped and replaced, an allowance is made equal to that part of the original cost which is not covered by depreciation allowances made for Income Tax purposes and by the scrap value. (*Page* 215.)

64. Where, as a consequence of the war, the execution of renewals or repairs is postponed in any case, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees. (*Page* 217.)

65. Where, as a consequence of the war, there has been exceptional depreciation or obsolescence of assets employed in the business, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees. (*Page* 218.)

66. Where it has been necessary, in connection with the war, to provide plant which will not be wanted for the purposes of the business after the termination of the war, the Commissioners of Inland Revenue may, on the taxpayer's application, allow such modification of the rules as they think necessary to meet the case. Further appeal may be made to a Board of Referees. (*Page* 223.)

67. The Treasury may make regulations specifying other special circumstances (of a similar kind) in which a taxpayer may apply to the Board of Inland Revenue for a modification of the rules governing the computation

of Excess Profits Duty. Appeal from the Board's decision may be made to a Board of Referees. (*Page* 225.)

Summary of Fourth Schedule of Finance (No. 2) Act, 1915. (*Page* 227.)

CHAPTER XI

THE COMPUTATION OF PROFITS : THE VALUATION OF STOCK

I.—General Principle

68. The general principle is that stocks should be valued at cost price or market value, whichever is lower. (*Page* 234.)

II.—General Modification :
Stocks at end of last Accounting Period

69. The value attributed to stocks in the account at the end of the last Accounting Period may be compared with the sums for which such stocks are realized within two years after the termination of the war. Any deficiency in the latter may be deducted from the profits of the said last Accounting Period. (*Page* 235.)

70. The whole of the stocks in hand at the end of the last Accounting Period, and no other stocks, must be dealt with together in making the adjustment under Rule 69. (*Page* 235.)

III.—Specific Modification :
Industries with Base Stocks valued at Fixed Prices

71. In certain cases (*see* Rules 72 to 77) a constant quantity of stocks may, for Excess Profits Duty purposes, be valued at a fixed price. (*Page* 236.)

72. Rule 71 covers stocks of raw or semi-manufactured goods which classes of industry require to keep for manufacturing processes. (*Page* 240.)

73. The stocks in question must be of such an imperishable character that a minimum quantity

required for a business could be held untouched for a long period. (*Page* 241.)

74. A recognized practice must have obtained, in the class of trade, of valuing a constant quantity at a constant price. (*Page* 241.)

75. Where the practice in question has obtained in a class of trade, any member of that class may be given the benefit of Rule 71, although he himself has not adopted the practice. But the quantity of stock so dealt with may not exceed the minimum amount held at any stocktaking in the three pre-war trade years. (*Page* 242.)

76. The balance of stock above the minimum quantity dealt with in accordance with Rules 71 to 77 may be treated as in Rule 69. (*Page* 242.)

77. Where stock has been reduced below the " constant quantity," profits on the sales which have effected this are taxable in the ordinary way.

But where such stock is of " a raw material associated with plant in a manufacturing process," the depletion may be the subject of a claim under Rule 65 (*exceptional depreciation of the stock*) or under Rule 64 (renewals of stock postponed). (*Page* 242.)

IV.—Special Modification for Individual Trader

78. Where a trader values stock as in Rule 74, but either—

(*a*) he is not a member of a class which conforms to both Rules 72 and 74 ; or

(*b*) the stock does not come within Rule 73,

he must, for Excess Profits Duty purposes, adopt the general principle stated in Rule 68.

But he may either—

(i) claim a deduction from the valuation in the last Accounting Period, equal to the difference at the end of the Standard Period between the valuation he adopted and a valuation under Rule 68 ; or

(ii) revise his stock valuation for all periods in accordance with Rule 68, and claim the concession accorded under Rules 69 and 70. (*Page* 243.)

CHAPTER XII

THE COMPUTATION OF PROFITS : THE SALE OR DISPOSAL OF TRADING STOCK

79. SPECIAL rules exist as regards trading stock belonging, or formerly belonging to any trade or business, which is sold after 22nd April, 1918, otherwise than in the ordinary course of trade. (*Page* 245.)

80. In Rule 79, " sale " includes—

(*a*) sale for a consideration other than cash ; and

(*b*) disposal otherwise than by way of sale ;

but it does not include—

(*c*) disposal by way of testamentary disposal. (*Page* 250.)

81. Where stock has been disposed of or sold for a consideration, the value of which cannot be easily ascertained, such stock is to be deemed to have realized the market price of the day on which it was disposed of or sold. (*Page* 251.)

82. Where the trading stock is sold together with other assets, the Commissioners of Inland Revenue may determine what part of the consideration shall be attributed to the trading stock. Appeal may be made to the General Commissioners for the Division, or to the Special Commissioners (*Rule* 116). (*Page* 252.)

83. In Rule 79, " trading stock " includes—

(*a*) any goods such as are sold in the ordinary course of a trade or business, whether in a finished condition or not ; and (*b*) any raw or other materials used in the manufacture or preparation of any such goods. (*Page* 252.)

84. If the trading stock belongs to a trade or business existing at the time of sale, the profit on such sale is deemed to arise from the business. (*Page* 253.)

85. If the business to which the trading stock belonged has ceased at the time of sale, it is nevertheless deemed to have been carried on up to and including the time of sale. In this case the Accounting Period is to be determined by the Commissioners of Inland Revenue. (*Page* 254.)

86. Where the business has ceased and Rule 85 operates, the person by whom authority the trading stock is sold is deemed to be the person carrying on the business and is liable to pay the duty.

This may apply to the owner, agent, liquidator, trustee, receiver, or other person acting in a similar capacity, who authorizes the sale. (*Page* 255.)

87. After the 14th May, 1918, no person may dispose of trading stock other than by way of sale, unless he has previously made provision to the satisfaction of the Commissioners of Inland Revenue for securing the payment of any Excess Profits Duty which may be chargeable.

Any disposal of stock in contravention of this rule is void and of no effect. (*Page* 255.)

CHAPTER XIII

THE COMPUTATION OF PROFITS: RULES FOR SPECIAL CONCERNS

88. In the case of life assurance businesses and investment companies, the income from investments is to be taken into account. Adjustments are to be made in respect of variation in the value of investments which is not due to a variation of profit; also in respect of

Excess Profits Duty having been paid by or repaid to the company with whom the investment was made. (*Page* 257.)

89. The industrial undertakings of a Local Authority are to be regarded as separate businesses, but the results are to be aggregated. Sums required to be raised by the undertakings for sinking fund purposes are to be allowed as deductions from profits. (*Page* 260.)

90. The liability of an Industrial and Provident Society is computed by ascertaining by how much the profits per member in the accounting period exceeded the profits per member in the pre-war period taken as the basis of the standard of profits, and by multiplying the excess by the number of members in the accounting period. As regards accounting periods ending after 31st December, 1916, an alternative method of computation is permitted, viz., the ascertaining of any excess on transactions with non-members by the ordinary rules, and the ascertaining of any excess with members by reference to increased profits per pound of turnover. There are restrictions as regards allowances for deficiencies when this alternative is adopted. (*Page* 262.)

CHAPTER XIV

THE ESTIMATION AND EFFECT OF THE AMOUNT OF CAPITAL EMPLOYED

91. In estimating capital for Excess Profits Duty purposes, no account may be taken of assets the income on which is ignored in estimating profits. (*Page* 271.)

92. In estimating capital, account may be taken of the money employed in the business, even though it represents profits accumulated in previous (but not the present) accounting period. (*Page* 272.)

93. In estimating capital, assets acquired by purchase are to be taken at their purchase price (less any part

thereof which has not been paid), subject to proper deductions for wear and tear or replacements. When the price was not paid in cash it must be taken as the value of the consideration given at the time of purchase. (*Page* 274.)

94. In estimating capital, assets which have not been acquired by purchase are to be taken at their value when they were acquired, subject to any proper deductions for wear and tear or replacement. (*Page* 278.)

95. In estimating capital, debts owing to the concern are to be included. Their value is declared to be their nominal amount less the amount of any allowance made therefrom for Income Tax purposes. (*Page* 278.)

96. For the purpose of computing the Percentage Standard (Rule 24) the existing capital may be increased by the amount of decreases in capital by reason of trading losses during the last six pre-war years. (*Page* 279.)

97. Where the shares of a company are mainly held by the person who owned the business before it became a company, the goodwill of the business is not (except in special circumstances) to be reckoned as capital for Excess Profits Duty purposes. (*Page* 280.)

98. Where the capital has increased, a deduction is made from the profits of the accounting period equivalent to—

> the statutory percentage per annum on the amount of the increase, for the purposes of any accounting period ended on or before 31st December, 1916, or—
>
> 3 per cent. more than the statutory percentage per annum on the amount of the increase, for the purposes of any accounting period ending after 31st December, 1916, or—
>
> 5 per cent. more than the statutory percentage per annum on the amount of the increase for the

purposes of any accounting period ending after 31st December, 1919. (*Page* 281.)

99. Where the capital has decreased, an addition is made to the profits of the accounting period equivalent to the original statutory percentage per annum on the amount of the decrease. This percentage is increased neither with the increased percentage granted to concerns other than companies (Rule 26), nor with the increased percentage grants in respect of increased capital (Rule 98). (*Page* 288.)

100. Where capital was introduced after 1st August, 1911, but was unremunerative or not fully remunerative until the accounting period, an appropriate addition may be made to the profits standard.

As regards accounting periods ending after 31st December, 1916, this rule applies to capital introduced after 1st August, 1908. (*Page* 291.)

CHAPTER XV

SPECIAL PROVISIONS REGARDING SHIPPING AND THE PURCHASE AND SALE OF SHIPS

1915 *Legislation*

See Rule 47.

1916 *Legislation*

Computation " if the Commissioners of Inland Revenue so require "

101. THE Standard of Profits which attached to the ship in the hands of the vendor (profits standard or percentage standard, as it happened to be) shall continue to be attached to the ship while in the new ownership. (*Page* 296.)

102. If the vendor owned other ships, so that the ship sold was joined with others as regards the standard of profits, the standard must be apportioned between the ship sold and the rest of the ships. (*Page* 298.)

103. The adjustments for alterations in capital required under Rules 98 to 100 do not apply. Any differences (between the apportioned capitals (*Rule* 102) and actual capitals) which arise out of variations in loans, etc., are to be met by the necessary adjustments. Differences arising out of the purchase or sale are to be disregarded. (*Page* 301.)

104. In applying Rule 60 (allowance for depreciation) and Rule 65 (allowance for loss of capital through exceptional depreciation or obsolescence in consequence of the war) no allowance shall be made larger because the purchase price exceeds what was the capital value of the ship in the hands of the vendor. (*Page* 306.)

105. The Commissioners of Inland Revenue may require the vendor to give such information to themselves and to the purchaser as they think necessary in order to enable these rules to be carried out. (*Page* 307.)

1917 *Legislation*

106. Duty continues to be payable in respect of any excess arising from the business of shipping, whether before or after 1st January, 1917. But no allowance may be made in respect of any loss or deficiency arising from such business after that date except for such deficiency as would arise had the percentage standard been adopted. (*Page* 308.)

107. Where the 1st January, 1917, does not constitute the commencement of an accounting period, the profit of the period covering that date must be apportioned by reference to the number of months, or fractions of months, which fall before and after the said 1st January, 1917. (*Page* 310.)

108. When a shipping business is only part of the business which is carried on—

(*a*) if such part is carried on merely as ancillary to the other (which is the principal) business, the restriction in Rule 106 does not apply ;

(*b*) if the non-shipping portion of the business is ancillary to the shipping portion, the restriction in Rule 106 applies to the entire business ;

(*c*) if neither (*a*) nor (*b*) apply, the Commissioners shall apportion any deficiency or loss so as to allow the portion not arising from the shipping business. (*Page* 311.)

CHAPTER XVI

RETURNS, ASSESSMENTS, APPEALS, AND GENERAL PROCEDURE

109. PERSONS chargeable (including liquidators of companies) are required to give notice within two months after the termination of the accounting period for which a charge should be made unless they have given notice on a previous occasion. (*Page* 312.)

110. The Commissioners of Inland Revenue may require returns to be furnished within two months, also such other particulars as they may require. (*Page* 314.)

111. In the case of a liable company being wound up the liquidator must give notice and set aside a sufficient sum to meet the duty. (*Page* 315.)

112. The duty shall be—

(*a*) Assessed by the Commissioners of Inland Revenue;

(*b*) Payable at any time after two months from the date of assessment; the Commissioners may permit payment by instalments;

(*c*) Paid in advance (or a sum on account thereof) where the taxpayer desires; the Treasury shall fix the rate of interest to be allowed at the time;

(*d*) Recoverable as a debt to the Crown, also (if less than £50) summarily as a civil debt. (*Page* 315.)

113. The Treasury may make regulations for the acceptance of war stock and bonds in satisfaction of Excess Profits Duties and Munitions Levies. (*Page* 318.)

114. Duty may be assessed—

(*a*) where there has been no change of ownership since the commencement of the accounting period concerned—on the person owning or carrying on the business ;

(*b*) where the ownership has changed since the commencement of the accounting period concerned, and where an account was drawn up at the date of change—on the person who owned or carried on the business, or his agent (for the period prior to the change) and on the person now owning or carrying on the trade or business (for the period since the change) ;

(*c*) where the ownership has changed since the commencement of the accounting period concerned, and where no account was drawn up to the date of change—*either* as in (*b*), *or* on the person now owning or carrying on the business (for the accounting period including the date of change). (*Page* 319.)

115. In cases other than those of individuals charged in their own names—

(*a*) Firms are to be charged in one sum; returns are to be made by the precedent acting partner (or by the agent, etc., where no partner resides in the United Kingdom); returns may be required from all partners.

(*b*) Companies and other bodies are chargeable in the names of their secretaries or other officers.

(*c*) Infants and lunatics are chargeable in the names of their trustees, guardians, committees, etc.

(*d*) Persons resident abroad are chargeable in the names of their agents resident in this country. (*Page* 322.)

116. Appeal may be made to the General or Special Commissioners of Income Tax, and may, on a point of law, be carried to the High Court. Duty may be required to be paid notwithstanding any appeal; immediate repayment is to be made where necessary. (*Page* 324.)

117. The penalty for failure to give notice of liability or to furnish a proper return or other particulars required, is a fine not exceeding £100 and £10 for every day during which the default continues after conviction. A fine not exceeding £100 may be imposed in respect of attempted evasion of liability by means of a fictitious or artificial transaction, or for failure to reveal any such transaction entered into before the passage of the Act. (*Page* 326.)

118. Secrecy is imposed on all officials dealing with the assessment and collection of Excess Profits Duty. (*Page* 327.)

119. The Inspector of Taxes may make use of information and documents relating to the Income Tax assessments on persons, etc., concerned. He may have access to all papers furnished to the Commissioners to whom appeal is made against an Excess Profits Duty assessment. Notices to the Board may be sent to him. (*Page* 328.)

120. Forms, assessments, etc., shall be as required by the Commissioners of Inland Revenue. Proceedings are not void for want of form. (*Page* 328.)

121. The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the duty and the hearing of appeals. (*Page* 329.)

CHAPTER XVII

EXAMPLES

PART II.—ESTABLISHMENTS CONTROLLED UNDER THE MUNITIONS OF WAR ACTS

CHAPTER XVIII

LEVIES UNDER THE MUNITIONS OF WAR ACTS IN RESPECT OF PROFITS ARISING FROM THE DATE OF CONTROL TO 31ST DECEMBER, 1916

122. THE Minister of Munitions had power to order that any establishment in which munitions work is carried on should be subject to special provisions as to the limitation of profits, as from a date specified by him when declaring the establishment "controlled," to 31st December, 1916. (*Page* 364.)

123. Of the profits of any period during which an establishment is under control (but not as regards profits arising after 31st December, 1916)—

> an amount exceeding the "standard" of profit by 20 per cent. is declared to be the amount of profits divisible (*i.e.*, remaining at the disposal of the proprietors so far as the Munitions of War Acts are concerned); the balance is to be paid into the Exchequer. (*Page* 366.)

124. The standard is the average profit of the establishment's two financial years last completed before 4th August, 1914, or a special standard may be granted.

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
This standard may be varied by agreement or by the Referees.	If agreement cannot be reached with the Commissioners of Inland Revenue, the matter may be referred to the Minister of Munitions and then (if desired) to the Referees. (*See Rule* 132.) (*Page* 367.)

125. The standard may be increased by 8 per cent. interest on the amount of any additional capital used in the establishment, or (where the output has increased) by the amount considered by the Minister of Munitions (or the Commissioners of Inland Revenue) to afford a reasonable return in respect of the additional output. The establishment may select the more favourable of these two allowances. The allowance may be in addition to or in lieu of the 20 per cent. referred to in Rule 123, according as the Minister may direct.

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
The powers of the Minister may be exercised by the Referees on appeal.	If agreement cannot be reached with the Commissioners of Inland Revenue, the matter may be referred to the Minister of Munitions and then (if desired) to the Referees. (*See Rule* 132.) (*Page* 368.)

126. In computing profits deductions are allowed for "proper selling, office, or other expenses," but not for Income Tax, interest, or in respect of assets not employed in the establishment whose profits are being considered. (*Page* 370.)

127. In computing the profits for any period of assessment to the Munitions Levy, appropriate adjustments may be made for—

(i) exceptional wear and tear;
(ii) capital expenditure for munitions work purposes;
(iii) exceptional services rendered by the controlled owner;
(the above by addition to the standard or deduction from profits);

(iv) the probable value, when control ceases, of matters remaining from expenditure for munitions work purposes;

(v) increased remuneration to managers, etc., or other operations whereby profits are decreased (from 2nd Aug., 1917, Rule 49 applies to Munitions Levy computations, *i.e.*, the power accorded to the owner of recouping himself for the disallowance of increased remuneration by recovery from the director or manager in question) ;

(the above by deduction from the standard or addition to profits);

(vi) special arrangements between the Government and the establishment;

(vii) any other matter appearing material to the Minister of Munitions (or to the Commissioners of Inland Revenue) or to the Referee;

(the above to increase or decrease the excess above the standard, according to the facts).

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
The adjustments referred to may be reviewed in computing the profits of the last period of control.	Any of the above adjustments which cannot be finally determined within the assessable period are required to be determined (and provisional allowances adjusted) at the same time as allowances under Rule 65. (*Page* 370.)

128. The Minister of Munitions (or the Commissioners of Inland Revenue) or the Referee may permit or require the profits or losses of any other establishments belonging to the same owner to be brought into account for Munitions Levy purposes. Conversely, a part only of an establishment may be brought into account.

PROCEDURE FROM 2ND AUG., 1917.

The Commissioners of Inland Revenue may require any establishments in which the same person has a controlling or preponderating interest to be treated as belonging to the same owner. (*Page* 374.)

129. Unless it is directed otherwise by the Minister of Munitions (or by the Commissioners of Inland Revenue),

the accounts covering any period of assessment are to be made up similarly (as regards dates and basis) to those for the standard period;

where an account covers a controlled period and a non-controlled period, the profits are to be apportioned between them according to their respective lengths of time;

no period of assessment may be longer than one year.

The Minister (or Commissioners) may fix the opening and closing dates of a period whenever it is considered necessary to do so. (*Page* 375.)

CHAPTER XIX

LEVIES UNDER THE MUNITIONS OF WAR ACTS IN RESPECT OF PROFITS ARISING FROM THE DATE OF CONTROL TO 31ST DECEMBER, 1916 (CONTINUED)

130. THE Minister of Munitions (or the Commissioners of Inland Revenue) may call for any information desired for the purpose of his (or their) powers and duties. Such audited accounts and particulars as may be required with a view to determining the standard must be furnished within six weeks of the requirement. Similar particulars with regard to every period of assessment must be supplied within three months from the end of that period.

	Further Rules of Procedure from 2nd Aug., 1917.
	The Commissioners of Inland Revenue may require returns and such other particulars as they desire to be furnished within two months. Officers of the Commissioners may make use of documents, etc., furnished in connection with Income Tax, Excess Profits Duty, or Munitions Levy.

All books and plant, etc., may be examined by an accountant nominated by the Minister or the Commissioners ; the Referee is required to determine any difference as to the necessity of any action proposed in this connection ; any notice may be served by registered post. (*Page* 378.)

131. Procedure is outlined as follows as regards assessments—

Procedure before 2nd Aug., 1917.	Procedure from 2nd Aug., 1917.
The Minister of Munitions is required to issue notices of proposals as regards the amounts to be taken as the standard and profits of assessing periods. In the absence of objection within fourteen days the amounts are deemed to be agreed.	The Commissioners of Inland Revenue are required to assess the levy and to give notice personally or by post. They may make additional assessments within three years from the date of the first assessment. They may assess to the best of their judgment when no return is made or the return is considered incorrect. All amounts agreed upon between the controlled owner and the Minister of Munitions are to be adopted by the Commissioners, both as regards the standard and any allowances, etc. (*Page* 382.)

132. Procedure is outlined as follows as regards appeals—

Procedure before 2nd Aug., 1917.	Procedure from 2nd Aug., 1917.
Objection may be made within 14 days and in the event of continued disagreement the matter may be remitted to the Referee who may increase or decrease the amounts proposed.	Objection may be made within 30 days of the notice. In the event of continued disagreement the matter may be remitted for decision as follows— To the Minister of Munitions when the ground is (*a*) the non-allowance by the Commissioners of a standard other than that computed in the normal manner (*Rule* 124) or the insufficiency of such standard; (*b*) the absence or insufficiency of allowances under Rule 127, iii, v, vi or vii or Rule 125; (*c*) the departure by the Commissioners from any agreement made with the Minister. To the Referee— (*d*) in cases under (*a*), (*b*) or (*c*) where objection to the Minister's decision is expressed within 30 days; (*e*) in other cases of objection. A case may be taken to the High Court on a question of law. (*Page* 384.)

133. Temporary rules of procedure were drawn up as regards assessments made by the Minister of Munitions but not collected at the time (2nd August, 1917) of the transfer of jurisdiction to the Commissioners of Inland Revenue. (*Page* 389.)

134. Two members of a Board of Referees (appointed by the Minister of Munitions) may constitute a quorum. Any decision given is conclusive (but see Rule 132). Provision is made for the remuneration of Referees, and for the controlled owner to bear the cost of an unreasonable application to the Referees as regards

(*a*) the inclusion of the profits or losses of other concerns in the same ownership (*Rule* 128);

(*b*) the substitution of a standard other than that computed in the normal manner (*Rule* 124). (*Page* 391.)

135. Procedure as regards payment—

PROCEDURE BEFORE 2ND AUG., 1917.	PROCEDURE FROM 2ND AUG., 1917.
Payment must be made within 14 days of the determination of the amount payable, unless an extension of time is allowed by the Minister of Munitions. The Minister may require a provisional payment to be made before the liability is determined. Repayment is to be made if necessary to give effect to Rule 127 (*procedure before 2nd Aug.*, 1917).	Payment must be made within 2 months of the date of assessment. The Levy is recoverable as a debt due to the Crown, and also, if less than £50, summarily as a civil debt. It is payable notwithstanding that any appeal or reference is being made, but repayment must be made subsequently to give effect to any decision. The Commissioners of Inland Revenue may permit payment by instalments. They may accept deposits to meet payments becoming due thereafter, and allow interest thereon. (*Page* 393.)

136. The Minister of Munitions has made regulations under date 15th September, 1914, and amended regulations under date 30th March, 1917, duly presented to Parliament. The Commissioners of Inland Revenue have made regulations under date 3rd August, 1917, (*Page* 395.)

137. For failure to deliver any information required by the Minister of Munitions (or the Commissioners of Inland Revenue) or to comply with any of the provisions of the Munitions of War Act, 1915, or the Rules, a fine not exceeding £50 may be imposed by the munitions tribunal for each offence. This fine may also be imposed on officers of a company knowingly parties to the offence. For false statements, three months' imprisonment or a fine not exceeding £50 may be imposed on the person concerned by process under the Summary Jurisdiction Acts.

PROCEDURE FROM 2ND AUG., 1917.

The penalty for failure to furnish a proper return or other particulars required is a fine not exceeding £100 and £10 for every day during which the default continues after conviction. (*Page* 401.)

138. The Acts provide for the abrogation of any Act or other legal requirement so far as it would prevent compliance with the section imposing the levy. They further bind officials to secrecy and permit other Government Departments to perform any duties imposed on the Ministry of Munitions. (*Page* 403.)

CHAPTER XX

THE COMBINED EFFECT OF MUNITIONS ACT LEVIES AND EXCESS PROFITS DUTY CHARGES AND TRANSFER OF JURISDICTION

139. As regards profits arising from the date of control to 31st December, 1916, the liability of controlled concerns by way of—

(*a*) Munitions Acts Levies, and

(*b*) Excess Profits Duty

is whichever is larger of the sums payable under (*a*) or (*b*) if each is computed separately. Any payment under one head may be set against liability under the other head. As regards profits arising after 31st December, 1916, the Munitions Acts Levies cease to exist. Excess Profits Duty remains chargeable. The profits of accounts covering periods before and after 31st December, 1916, must be apportioned according to the lengths of the respective periods. (*Page* 405.)

140. From the date (2nd Aug., 1917) of the passing of the Finance Act, 1917, all undischarged liability (to 31st December, 1916) to the Munitions Levy is to be assessed and collected by the Commissioners of Inland Revenue instead of by the Minister of Munitions. (*Page* 408.)

141. Rules 51 to 53 apply also to Munitions Acts' Levies, both as to the prohibition of deductions, in computing liability to Excess Profits Duty, for sums paid as Munitions Acts' Levies, and as to the allowance of such sums in computing liability to Income Tax. (*Page* 410.)

142. In the case of controlled concerns, any applications regarding Excess Profits Duty under Rules 62 to 65 are to be referred to the Referees appointed under the Munitions Acts (*Rule* 134) and not to the Referees appointed by the Treasury. (*Page* 410.)

PART III.—EXCESS MINERAL RIGHTS DUTY

CHAPTER XV

EXCESS MINERAL RIGHTS DUTY

143. EXCESS mineral rights duty is chargeable where the rent payable for the right to work minerals, or in respect

of any mineral wayleaves, varies according to the price of the minerals. (*Page* 412.)

144. No duty is chargeable where the right or wayleave is part of the assets of the trade or business of the person receiving the rent. (*Page* 413.)

145. The duty payable is 50 %, 60 %, 80 %, or 40 % of the excess of the rent of the accounting year over the pre-war standard of rent. The accounting year is any working year ending after 4th August, 1914. As regards any accounting year for the whole or part of which duty at 80 % or 40 % is payable, the duty is required to be restricted, if necessary, so that the actual rent in the year is not reduced thereby below the actual average rent in the pre-war standard years. If the former is less than the latter no duty is payable. (*Page* 413.)

146. The pre-war standard of rent is the average of any two of the three last pre-war rent values, selected by the taxpayer. Where the minerals have not been worked or the wayleaves have not been let in those years, or where there are no proper data, the Commissioners of Inland Revenue may fix the standard, subject to appeal. (*Page* 416.)

147. The pre-war rent value for each of the three years is the amount which the rent of the accounting year would equal if it were based on the average prices governing the rent in the year concerned. (*Page* 419.)

148. Any amount payable (in the accounting year) by the lessee of the minerals or wayleaves to a superior lessor, must be deducted from the rent receivable by the lessee, and a corresponding deduction must be made in computing pre-war rent values. (*Page* 421.)

149. The duty is payable in addition to any mineral rights duty. Any increment value duty payable annually is, when paid, to be treated as a deduction

from the rent payable in the year in which that duty is paid; a corresponding deduction must be made in computing the pre-war standard of rent. (*Page* 422.)

150. The duty is to be assessed by the Commissioners of Inland Revenue, subject to appeal. It is recoverable as a debt due to the Crown. Returns may be required. (*Page* 422.)

APPENDIX I

PROVISIONS CONTAINED IN THE INCOME TAX ACTS AND MADE APPLICABLE TO EXCESS PROFITS DUTY

High Court Cases.

Taxes Management Act, 1880 (43 *and* 44 *Vict. c.* 19), *s.* 59, *made applicable by Finance* (*No.* 2) *Act,* 1915, *s.* 45 (5), *page* 324, *which see.*

(1) Immediately upon the determination of any appeal under the Income Tax Acts by the General Commissioners, or by the Special Commissioners, or any appeal under the Acts relating to the Inhabited House Duties by the General Commissioners, the appellant or the surveyor may, if dissatisfied with the determination as being erroneous in point of law, declare his dissatisfaction to the Commissioners who heard the appeal, and having so done may, within twenty-one days after the determination, require the Commissioners, by notice in writing addressed to their clerk, to state and sign a case for the opinion of the High Court thereon. The case shall set forth the facts and the determination, and the party requiring the same shall transmit the case, when so stated and signed, to the High Court within seven days after receiving the same, and shall previously to or at the same time give notice in writing of the fact of the case having been stated on his application, together with a copy of the case,

to the other party, being the surveyor, or the appellant, as the case may be.

(2) In relation to cases to be so stated, and the hearing thereof, the following provisions shall have effect—

(*a*) The party requiring the case shall, before he shall be entitled to have the case stated, pay to the clerk to the Commissioners a fee of twenty shillings for and in respect of the case ;

(*b*) The High Court shall hear and determine the question or questions of law arising on a case transmitted under this Act, and shall thereupon reverse, affirm, or amend the determination in respect of which the case has been stated, or remit the matter to the Commissioners with the opinion of the High Court thereon, or may make such other order in relation to the matter, and may make such order as to costs as to the High Court may seem fit ;

(*c*) The High Court shall have power, if they think fit, to cause the case to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended ;

(*d*) The authority and jurisdiction hereby vested in the High Court shall and may (subject to any rules and orders in relation thereto) be exercised by a judge of the High Court sitting in chambers, as well in vacation as in term time ;

(*e*) The High Court may, from time to time, and as often as they shall see occasion, make and alter rules and orders to regulate the practice and proceedings in reference to cases stated under this Act.

(NOTE.—*The above* (*e*) *is repealed as regards England and Ireland.*)

(3) An appeal shall lie from the decision of the High Court, or of any judge thereof, upon any case stated under the above provisions to his Majesty's Court of Appeal, and from thence to the House of Lords, and from the decision of the Court of Session, as the Court of Exchequer in Scotland, upon any case so stated to the House of Lords.

(4) The fact that a case so stated is pending before the High Court shall not in any way interfere with the payment of the Income Tax or Inhabited House Duty according to the assessment of the Commissioners by whom the case was stated, but the Income Tax or Inhabited House Duty shall be paid according to such assessment, as if the case had not required to be stated, and in the event of the amount of assessment being altered by the order or judgment of the High Court the difference in amount, if too much has been paid, shall be repaid with such interest (if any) as the High Court may allow, and if too little, shall be deemed to be arrears (except so far as any penalty is incurred on account of arrears), and shall be paid and recovered accordingly.

(As regards (4), however, see Rule 116.)

Depreciation.

Customs and Inland Revenue Act, 1878 (41 *and* 42 *Vict. c.* 5), *s.* 12, *referred to in Finance* (*No.* 2) *Act,* 1915. *Fourth Schedule, Part I,* 3 (*page* 206).

Notwithstanding any provision to the contrary contained in any Act relating to Income Tax, the Commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule (D), or the profits of any concern chargeable by reference to the rules of that Schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on; and for the purpose of this provision, where machinery or plant is let to the person or company by whom the concern is carried on upon such terms that the person or company is bound to maintain the machinery or plant, and deliver over the same in good condition at the end of the term of the lease, such machinery or plant shall be deemed to belong to such person or company.

And where any machinery or plant is let upon such terms that the burden of maintaining and restoring the same falls upon the lessor, he shall be entitled on claim made to the Commissioners for general or special purposes, in the manner prescribed by section sixty-one of the Act of the fifth and sixth years of her Majesty's reign, chapter thirty-five, to have repaid to him such a portion of the sum which may have been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the Income Tax upon such an amount as the said Commissioners may think just and reasonable, as representing the diminished value by reason of wear and tear of such machinery or plant during the year. Provided, that no such claim shall be allowed unless it shall be made within twelve calendar months after the expiration of the year of assessment.

See Rule 61 as regards the following—

Where the Commissioners of Inland Revenue are satisfied on an application made to them for the purpose that any considerable number of persons engaged in any class of trade or business are dissatisfied with the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to the Board of Referees, and that Board shall deal with the case and determine the deduction to be allowed.

In this section—

The expression " deduction for wear and tear " has the same meaning as in section twenty-six of the Finance Act, 1907; *and*

The expression " class of trade or business " means a class of trade or business which may be determined to be such for the purposes of this section by the Commissioners of Inland Revenue; and

The expression "Board of Referees" means any Board of Referees appointed for the purpose of Part III of the Finance (No. 2) Act, 1915, *or if there is no such Board, a Board of Referees to be appointed for the purpose of this section by the Treasury.* (*Finance Act,* 1918, s. 24 (1).)

The following regulation has force under the subsection set out on page 329.

Subject to the express provisions of the Act and these Regulations the Sections of the Income Tax Acts enumerated in the Schedule to these Regulations shall, with the modifications therein prescribed, apply to the assessment and collection of Excess Profits Duty and the hearing of appeals in connection therewith. (*Regulation* 1, *Rules of* 1915.)

The contents of the Schedule are set out in the following pages in black type at the head of each of the sections referred to.

Income Tax Act, 1842 (5 and 6 Vict. c. 35), Section 40.

All bodies politic, corporate, or collegiate, companies, fraternities, fellowships, or societies of persons, whether corporate or not corporate, shall be chargeable with such and the like duties as any person will under and by virtue of this Act be chargeable with, and the chamberlain or other officer acting as treasurer, auditor, or receiver for the time being of every such corporation, company, fraternity, fellowship, or society shall be answerable for doing all such acts, matters, and things as shall be required to be done by virtue of this Act, in order to the assessing such bodies corporate, companies, fraternities, fellowships or societies to the duties granted by this Act, and paying the same.

See pages 49 and 322.

Income Tax Act, 1842 (5 and 6 Vict. c. 35), Section 41, save in so far as relates to a married woman.

The trustee, guardian, tutor, curator, or committee of any person, being an infant [or married woman], lunatic, idiot, or insane person, and having the direction, control, or management of the property or concern of such infant [married woman], lunatic, idiot, or insane person, whether such infant [married woman], lunatic, idiot, or insane person shall reside in Great Britain[1] or not, shall be chargeable to the said duties in like manner and to the same amount as would be charged if such infant were of full age, [or such married woman were sole], or such lunatic, idiot, or insane person were capable of acting for himself; and any person not resident in Great Britain,[1] whether a subject of her Majesty or not, shall be chargeable in the name of such trustee, guardian, tutor, curator, or committee, or of any factor, agent, or receiver, having the receipt of any profits or gains arising as herein mentioned, and belonging to such person, in the like manner and to the like amount as would be charged if such person were resident in Great Britain, and in the actual receipt thereof; and every such trustee, guardian, tutor, curator, committee, agent, or receiver shall be answerable for the doing of all such acts, matters, and things as shall be required to be done by virtue of this Act in order to the assessing of any such person to the duties granted by this Act, and paying the same.

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[1] Amended to United Kingdom (Income Tax Act, 1853, s. 5).

See page 322.

Income Tax Act, 1842 (5 and 6 Vict. c. 35), Section 44.

Where any person, being trustee, agent, factor, or receiver, guardian, tutor, curator, or committee of or for any person, shall be assessed under this Act in respect of such person, or where any chamberlain, treasurer, clerk, or other officer of any corporation, company, fraternity, or society shall be so assessed in respect of such corporation, company, fraternity, or society as aforesaid,[1] it shall be lawful for every such person who shall be so assessed, by and out of the money which shall come to his hands as such trustee, agent, factor, or receiver, guardian, tutor, committee, or curator as aforesaid, or as such chamberlain, treasurer, clerk, or other officer, to retain so much and such part thereof from time to time as shall be sufficient to pay such assessment; and every such trustee, agent, factor, or receiver, guardian, tutor, committee, or curator, chamberlain, treasurer, clerk, or other officer, shall be and is hereby indemnified against every person, corporation, company, fraternity, or society whatsoever, for all payments which he shall make in pursuance and by virtue of this Act.

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[1] See Sections 40 and 41 set out on pages 466 and 467.

See page 323.

Income Tax Act, 1842 (5 and 6 Vict. c. 35), Section 51, save in so far as it relates to a married woman.

Every person who shall be in the receipt of any money or value, or the profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person, in whatsoever character the same shall be received, for which such other person is chargeable under the regulations of this Act, or would be so chargeable if he were resident in Great Britain,[1] shall within the like period prepare and deliver, in manner before directed, a list in writing, in such form as this Act requires, signed by him, containing a true and correct statement of all such money, value, profits, or gains, and the name and place of abode of every person to whom the same shall belong, together with a declaration whether such person is of full age [or a married woman living with her husband, or a married woman for whose payment of the duty hereby charged on her the husband is not accountable by this Act] or resident in Great Britain,[1] or an infant, idiot, lunatic, or insane person, in order that such person, according to a statement, to be delivered as herein mentioned, may be charged either in the name of the person delivering such list, if the same shall be so chargeable, or in the name of the person to whom such property shall belong, if of full age, and resident in Great Britain,[1] and the same be so chargeable by this Act; and every person acting in such character jointly with any other person shall deliver a list of the names and places of abode of every person joined with him at the time of delivering such list, and to the same person to whom such list shall be delivered.

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[1] Amended to United Kingdom (Income Tax Act, 1853, s. 5).

See page 322.

Income Tax Act, 1842 (5 and 6 Vict. c. 35), Section 100, Schedule D. Rules relating to the first and second cases of that Schedule, Rule 3, down to and including the words "and no separate statement shall be allowed in any case of partnership."

The computation of duty arising in respect of any trade, manufacture, adventure, or concern, or any profession carried on by two or more persons jointly, shall be made and stated jointly and in one sum, and separately and distinctly from any other duty chargeable on the same persons, or either or any of them, and the return of the partner who shall be first named in the deed, instrument, or other agreement of copartnership (or where there shall be no such deed, instrument, or agreement, then of the partner who shall be named singly, or with precedence to the other partner or partners, in the usual name, style or firm, of such copartnership, or, where such precedent partner shall not be an acting partner, then of the precedent acting partner), and who shall be resident in Great Britain[1] (and who is hereby required, under the penalty herein contained for default in making any return required by this Act, to make such return on behalf of himself and the other partner or partners whose names and residences shall also be declared in such return), shall be sufficient authority to charge such partners jointly. Provided always, that where no such partner shall be resident in Great Britain,[1] then the statement shall be prepared and delivered by their agent, manager, or factor resident in Great Britain,[1] jointly for such partners, and such joint assessment shall be made in the partnership name, style, firm, or description, and no separate statement shall be allowed in any case of partnership.

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[1] Amended to United Kingdom (Income Tax Act, 1853, s. 5).

See pages 49 and 322.

Taxes Management Act, 1880 (43 and 44 Vict. c. 19), Section 15, subsections (2) and (5).

(2) Every assessment, duplicate, charge, bond, warrant, notice of assessment or of demand, or other document required to be used in the assessing, charging, levying, and collecting of the duties and the land tax shall be made out, drawn and prepared according to the several forms as prescribed and supplied or approved by the Board from time to time, and shall be valid and effectual without

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[1] Amended to United Kingdom (Income Tax Act, 1853, s. 5).

stating the case or the facts or evidence in any more particular manner than is required in and by such forms.

(5) No assessment, charge, warrant, or other proceeding which shall be made or shall purport to be made by virtue or in pursuance or in execution of this Act, or the Tax Acts, or Land Tax Acts, shall be quashed or deemed to be void or voidable for want of form, or be impeached or affected by reason of any mistake, defect, or omission therein, provided the person or property charged or intended to be charged or affected by any such proceeding be designated therein to common intent and understanding, and such proceeding be in substance and effect in conformity with or according to the intent and meaning of the said Acts.

See page 328.

Taxes Management Act, 1880 (43 and 44 Vict. c. 19), Section 55, down to and including the words "the several particulars on which the charge is made."

No assessment, nor any charge made upon any assessment, shall be impeached or affected—

(*a*) By reason of any mistake therein, or in either of them,

(i) In the Christian name or names, or surname, of any party liable to any of the duties;

(ii) In the description of any profits or property;

(iii) In the amount of the duty charged:

(*b*) By any variance between the notice and the certificate of charge or assessment;

provided that in cases of charge the notice thereof be duly served on the person intended to be charged, and such notice and certificate do severally contain in substance and effect the several particulars on which the charge is made.

See page 328.

Finance Act, 1907 (7 Ed. 7, c. 13), Section 22, subsection (2).

The duties imposed on officers of any corporation, company, fraternity, fellowship, or society by sections forty[1] [and fifty-four][2] of the Income Tax Act, 1842 [and by section eighteen of the Customs and Inland Revenue Act, 1879[2]], shall, in the case of any company, be performed by the secretary of the company or other officer (by whatever name called) performing the duties of secretary.

See page 322.

Finance Act, 1914 (4 and 5 Geo. 5, c. 10), Section 10, subsection (2).

Where any part of the trade or business of a partnership firm whose management and control is situate abroad, consists of trading operations within the United Kingdom, the said firm shall be assessable in respect of the profits of such trading operations within the United Kingdom to the same extent as, and no further than, a person resident abroad is assessable in respect of trading operations by him within the United Kingdom, notwithstanding the fact that one or more of the members of the said firm are resident in the United Kingdom, provided that, for the purpose of assessing any such firm in respect of the profits of the said trading operations within the United Kingdom, an assessment may be made on the said firm in respect of the said profits in the name of any partner resident in the United Kingdom.

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[1] See page 466.

[2] Not made applicable to Excess Profits Duty.

See pages 49 and 322.

The following provision is made applicable to Excess Profits Duty by regulation, but is now declared *ultra vires*. See the case of Gillette Safety Razor, Ltd., v. Commissioners of Inland Revenue (page 50).

Finance (No 2) Act, 1915 (5 and 6 Geo. 5, c. 89), Section 31.

(1) Section 41[1] of the Income Tax Act, 1842 (which relates to the charge of Income Tax in special cases), shall, so far as it relates to the taxation of non-residents, be extended—

(*a*) so as to make non-resident persons chargeable to Income Tax in the name of any branch or manager as well as in the name of any factor, agent, or receiver; and

(*b*) so as to make non-resident persons so chargeable, although the branch, factor, agent, receiver, or manager may not have the receipt of the profits or gains of the non-resident.

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[1] Page 467.

(2) A non-resident person shall be chargeable in respect of any profits or gains arising, whether directly or indirectly, through or from any branch, factorship, agency, receivership, or management, and shall be so chargeable under section forty-one of the Income Tax Act, 1842, as amended by this section, in the name of the branch, factor, agent, receiver, or manager.

(3) Where a non-resident person not being a British subject or a British, Indian, Dominion, or Colonial firm or company, or branch thereof, carries on business with a resident person, and it appears to the Commissioners by whom the assessment is made that, owing to the close connection between the resident and the non-resident person, and to the substantial control exercised by the non-resident over the resident, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be chargeable to Income Tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(4) Where it appears to the Commissioners by whom the assessment is made or, on any objection or appeal, to the General or Special Commissioners that the true amount of the profits or gains of any non-resident person chargeable in the name of a

resident person with Income Tax cannot in any case be readily ascertained, the Commissioners may, if they think fit, assess the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable, and in such case section fifty-three of the Income Tax Act, 1842, shall extend so as to require returns to be given of the business so done by the non-resident through or with the resident in the same manner as returns are to be given under that section of the profits or gains to be charged.

(5) The amount of the percentage shall in each case be determined, having regard to the nature of the business, by the Commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the additional Commissioners, to objection or appeal to the General or Special Commissioners.

If either the resident or non-resident person is dissatisfied with the percentage determined either in the first instance or on objection or appeal by the General or Special Commissioners he may, within four months of that determination, require the Commissioners to refer the question of the percentage to a referee or board of referees to be appointed for the purpose by the Treasury, and the decision of the referee or board shall be final and conclusive.

(6) Nothing in section forty-one[1] of the Income Tax Act, 1842 (as amended by any subsequent

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[1] Page 467.

enactment or by this section), shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorized person carrying on the non-resident's regular agency or a person chargeable as if he were an agent in pursuance of this section, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

(7) The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of this section in the name of a resident person shall not of itself make him chargeable in respect of profits arising from those sales or transactions.

See page 50.

APPENDIX II

SCHEDULE OF AGREED RATES OF DEPRECIATION.

Industry, etc.	*Rate per cent.*	*Prime Cost or Written-down Value.*	*Nature of Plant.*	*Remarks.*
Electric Light Undertakings	3 5	Written-down value " "	Cables Plant and machinery	
Flax Spinning and Linen Weaving (Ireland).	7½	Written-down value	Machinery and plant (except accessory plant such as pirns, pirn cages, spools, belting, driving ropes, damask cards, designs, patterns, models, furniture and fixtures).	
Flour Milling . . .	5 7½	Written-down value " "	Engines, boilers, and main shafting Other machinery	
Gas Undertakings other than those owned by municipal or other public authorities	3 10	Written-down value " "	Gasholders Meters, cookers, and gas fires	
Motor Omnibuses . .	20	Written-down value	Motor omnibuses	(*a*) The rate of 20 per cent. is to be reconsidered at the expiration of four years commencing with 1916–17 (*b*) This rate does not apply to commercial motor vehicles
Paper Mills . . .	5 7½	Written-down value " "	Machinery working day only Machinery working day and night	

Printing	5	Written-down value	Engines, boilers, and shafting	
	7½	,, ,,	Printing and binding machines	
	10	,, ,,	Type	
Railway Wagons . .	5	Written-down value	Railway wagons	(*a*) The allowance applies to all wagons owned by traders (*b*) In the case of railway companies the method adopted is to allow the actual cost of renewals year by year
Shipping	4	Prime cost	Steamships	With regard to ships *purchased at secondhand* at prices in excess of the written-down value at the date of purchase, the following arrangements have recently been made— (*a*) The allowance is made on the actual cost price of the ship to the owner for the time being without regard to the prime cost to a previous owner (*b*) The rate of depreciation allowable is calculated by reference to the reasonable expectation of the life of the ship at the date of purchase from the previous owner
	3	,, ,,	Sailing vessels	
Timber Merchants, Saw Millers, and Manufacturers of Timber Goods	5	Written-down value	Engines, boilers, and main shafting	
	7½	,, ,,	General saw-milling plant and machinery	
	20	,, ,,	Traction engines, tractors, motor-cars, and haulage plant	
Tramways . . .	—	—	Permanent way	An allowance per mile of track based upon the estimated life of the permanent way
	3	Written-down value	Cables	
	7	,, ,,	Cars and other rolling stock	
	5	,, ,,	General plant and machinery, including standards, brackets, and work-shop tools	

APPENDIX III

VALUATION OF BASE STOCKS

The following industries have been admitted to the operation of Rules 71–77—

Tinplate manufacture (for tin in pots).

Cotton spinning (for the clothing of the machines).

Tanning (for liquor in pits).

Manufacture of bichromates of potash, soda and ammonia (for chrome ore).

Tube manufacturers (for unworked copper and spelter).

Aluminium manufacture.

Tin lead manufacture in Ceylon.

Lead smelters.

Desilverisers.

Cotton spinners (loose quantities of raw cotton in the spinning section).

White lead and lead oxide manufacturers.

Brass and copper trade.

Tanning industry.

The Brass and Copper Trade *has been admitted to the operation of Rules* 71–77, *modified as in the following official memorandum*—

(1) Applications have been received by the Board of Inland Revenue from the Brass and Copper Tube Association, the Cold Rolled Brass and Copper Association, and the Manufactured Copper Association for the

" base stock " method of valuation under paragraph 2 of the White Paper to be applied in determining the liability to Excess Profits Duty and Munitions Levy of certain of their members. The Board are prepared to agree that that method of valuation shall be applicable, to the extent detailed below, to those members of the Associations who carry on the trade of Brass and Copper goods manufacture, up to and including the production of tubes, plates, wire, rods, and the like, but excluding finishing trades such as Coppersmiths, Brass Founders, and the like.

(2) The base stock principle shall be applied to a constant quantity (as detailed below) of Copper, Spelter, and Brass held as raw material or contained in material in any stage of manufacture other than completely manufactured goods.

(3) In the case of any individual member of the industry who has previously adopted the base stock method, the " constant quantity " of Copper, Spelter, and Brass referred to in the preceding paragraph to be treated as base stock shall be the lowest quantity held by that member at any stock-taking in the three pre-war years, which has been valued at a base price.

(4) In the case of any individual member of the industry who has not adopted the base stock method, the minimum quantity to be adopted as the constant quantity shall be 50 per cent. of the lowest quantity of stock, as defined in paragraph 2, held at any stock-taking in the three pre-war years. The base price of such constant quantity shall be the lowest cost price or market value at which the stock was taken by the individual member in the three pre-war years.

(5) Members of the industry who have not made a practice of valuing a *constant* quantity of stock at a

fixed price, will be dealt with under the terms of paragraph 4.

(6) Similarly, paragraph 4 will apply in cases where the *whole* stock on hand has been valued at a flat rate, or in some similar way.

(7) The balance of stock above the quantity of base stock shall be valued at cost price or market value and dealt with under paragraph (1) of the White Paper.

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